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Report of the Alberta Commission Of Inqu
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I N Q U I R Y

INTO THE ALLEGED EXCESSIVE USE OF FORCE

AT THE CALGARY CORRECTIONAL INSTITUTE

THE REPORT OF

A. M. HARRADENCE, Q.C.

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APPEARANCES:

J. P. Peacock, Esq.,	Appeared for the Commission
W. V. Stilwell, Esq.,	Appeared for the Alberta Civil Servants Association and Assistant Deputy Warden Schlegel
G. R. Meurin, Esq.,	Appeared for Warden Jackson, Deputy Warden Stanton, Assistant Deputy Warden Merriam, Assistant Deputy Warden Elliot, and Assistant Deputy Warden McMeekin
L. W. Scott, Esq., A. W. Macdonald, Jr., Esq., R. K. Laing, Esq., C. Gottsellig, Esq.,	Appeared for the inmates
R. W. Bourassa, Esq.,	Appeared for the John Howard Society
M. M. Hetherington (Mrs.),	Appeared for James David
S. Carscallen, Esq.,	Appeared for Murray Dale, CKXL

V. McDonnell, Esq.,	Clerk of the Public Inquiry
B. B. Loomis, Esq. W. A. Sherbinin, Esq., J. C. Cloarec, (Miss), B. G. Goulden, (Mrs.), M. S. Stevens, (Mrs.), J. M. Brewster, Esq.,	Official Court Reporters

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TO THE HONOURABLE

THE SOLICITOR GENERAL OF THE PROVINCE OF ALBERTA

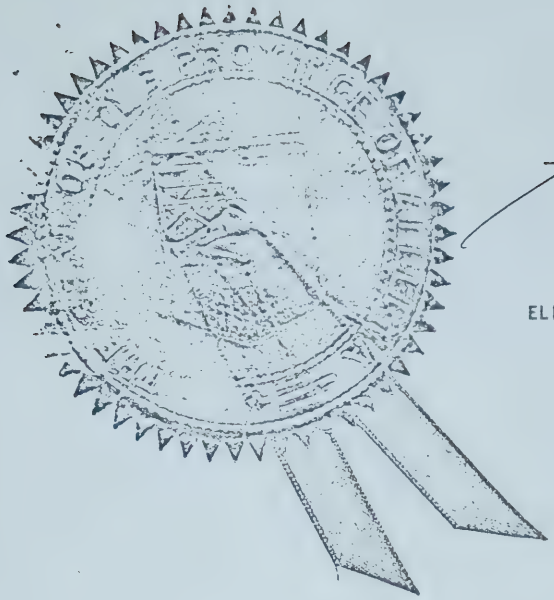
I have the honour to hand to you herewith the report of my inquiry conducted into and concerning the matters referred to in an Order made by the Lieutenant Governor in Council on the 23rd day of August, A. D. 1973.

I have the honour to be, Madam,

Your obedient servant,

A. M. Harradence
Commissioner

SECTION 1.1



Lieutenant Governor

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, QUEEN, Head of the Commonwealth, Defender of the Faith

COMMISSION

To all to Whom these presents shall come, or Whom the same may in anywise concern,

CANADA

PROVINCE OF ALBERTA

GREETING....

WHEREAS it is expedient and in the public interest to cause an inquiry to be made into and concerning the matters hereinafter set out:

NOW KNOW YE that by and with the advice and consent of our Lieutenant Governor in Council, We do by these Presents appoint, pursuant to The Public Inquiries Act, A.M. HARRADENCE, Q.C., as a commissioner to inquire into and report to the Lieutenant Governor in Council upon the alleged excessive use of force by correctional officers upon inmates of the Calgary Correctional Institution during the evening of July 17, 1973, and upon any other similar incidents which may be brought to the commissioner's attention during the course of the inquiry and into which he may, in his discretion, see fit to inquire.

IN TESTIMONY WHEREOF WE have caused these Our Letters to be made Patent and the Great Seal of Our Province of Alberta to be hereunto affixed.

WITNESS: The Honourable J. W. GRANT MacEWAN, Lieutenant Governor of Our Province of Alberta, in Our City of Edmonton, in Our Province of Alberta, this 23rd day of August in the Year of Our Lord, One Thousand Nine Hundred and Seventy-three and in the Twenty-second Year of Our Reign.

BY COMMAND:

A.G.A.G.

Provincial Secretary

SECTION 1.2 / GENERAL CONCLUSIONS AND RECOMMENDATIONS

SECTION 1.2 GENERAL CONCLUSIONS AND RECOMMENDATIONS

1. There is no doubt that force was used in each of the incidents enquired into by the Commission. The sole question to be determined is whether, in all of the surrounding circumstances, that force was excessive. To achieve this, one must briefly examine the philosophy of criminal sanctions in Canada.

2. The objectives and priorities of sanctions and sentencing in Canadian criminal jurisprudence are clear and unequivocal. They are, in order of priority: Firstly, to serve as a deterrent to others; secondly, to mete out punishment to the offender and, thirdly, to effect rehabilitation.

3. The penal system must therefore be designed and equipped to give effect to those objectives and priorities, where incarceration is selected as a method of achieving them. The use of force, or its immediate availability to compel incarceration, must be an integral part of the functioning of any custodial institution.

4. The Spy Hill Institution is, by reason of its physical design, the training programme of its custodial staff, and by reason of the administrative policies and philosophies of that branch of the Provincial Government charged with the responsibility of administering these institutions, well suited to carry out the first two priorities of the sentencing policy referred to in the preceding paragraphs.

5. The suggestion that the Spy Hill Institution, or any other institution in this Province or in Canada, is capable of effecting rehabilitation of the inmates within the institution is a cynical farce. Confinement of human beings against their will in close proximity to each other creates an abnormal and explosive situation. Trivial incidents take on a monumental significance. Frustration and violence are the norm, and perversion is accepted.

6. The use of force by those charged with the custodial duties under these circumstances is mandatory to ensure the bare functioning of the Institution.

7. The Commission finds that the Spy Hill Institution is fundamentally a place of incarceration. The Commission concludes that the use of force, as the Institution is presently constituted, is an inescapable consequence of the maintenance of incarceration. The substitution of blazers and crests for tunics and the "Sam Brown" belt and the introduction of semantic jargon of "rehabilitation" does not alter this fundamental reality, namely, that the objectives of rehabilitation are impossible to obtain where persons are maintained against their will in custody. To call the Spy Hill Gaol the Calgary Correctional Institute is akin to calling Attila the Hun a diplomat.

8. The public must no longer be deluded with the notion that the separate sentencing objectives are reconcilable in a prison environment.

9. The Commission has, in view of the foregoing, no hesitation in holding that there was no excessive use of force by Correctional Officers upon inmates of the Calgary Correctional Institute during the evening of July 17, 1973, or in any of the other similar incidents which were brought to the Commission's attention during the course of the Inquiry. And, in addition, the Commission also finds that on occasions admirable restraint was exercised by these officers.

10. The Commission states that the physical design of the jail suggests that those agencies of government who accepted the design, and were responsible for the construction of the Institute, were abysmally ignorant of the fundamental facts of prison life. The Commission makes the following conclusions in this context:

(a) Dormitories:

The use of dormitories should be abolished. The West Wing in particular has been described as a "snake pit" by a member of the Custodial Staff. All dormitories, and especially large ones, are difficult to control and always the locus of insurrection. The dormitory environment is conducive to the perpetuation and encouragement of the worst aspects of prison life relating to homosexuality, assault, brutality, and the victimization of younger and weaker inmates by the more vicious elements of the prison population. In this context, the 1961 decision to

create a 96-man unit in the West Wing, because the partitions dividing the previously existent six 16-man units had been torn down in a riot, is a classic example of the abysmal ignorance hereinbefore referred to, or callous sacrifice of responsibility on the altar of false economy.

(b) Punishment:

The Commission concludes that the architecture and location of the present punishment cell areas underneath the Guard Room and in the bottom of the Cell Block is wrong. In the present context of penal policy, punishment is fundamentally a matter of imposing a rigorous sense of isolation upon an inmate. The Commission concludes that punishment areas must be designed which provide maximum security, which rigorously create a sense of isolation, whose characteristics are such that the prisoner cannot help but regard his presence in them as punishment, and which are sufficiently remote from the main body of the prisoners that any disruptive behaviour within these areas will not disrupt the other inmates.

(c) Control Design:

The Commission concludes that the present rectilinear, hall-oriented design of the Calgary Institution is not conducive to security. This Commission concludes, for example, that radial or circular designs, with a Guard Room or Control Centre at the hub of such designs, would permit more effective control of cell block wings.

(d) Remand Facilities:

The Commission concludes that prisoners on remand, and sentenced prisoners, should no longer be incarcerated within the same facility. There are fundamental differences in the rights of remand prisoners and sentenced prisoners. The differences in status of these two classes of prisoners are the source of friction and irritation within the prison population.

(e) Drug Treatment:

The Commission concludes that drugs and persons under the influence of drugs enter Spy Hill Institution. The Commission concludes that means must be found to stop any flow of drugs into the Institution and that means must be developed within the prison to handle drug addiction and drug-induced behaviour separately within the prison environment, both behaviourally and physically. Prisoners suffering from drugs should be identified on entry, considered a separate category in terms of how they are handled and, once withdrawal has been effected, should only then be released into the general prison population.

11. The Commission states that training policies at the Calgary Institute and within the Provincial system as a whole must be changed and amended. The Commission makes the following conclusions in this context:

(a) Custodial officers lack training with relation to the problems of bringing resisting prisoners under physical control. The Commission concludes that it is clear that such a programme needs to be developed and systematically applied at the Spy Hill Institution, and that its form of development can and must include instruction in modes of physical subjugation of inmates without weapons, the use of permissible weapons, and the exercise of their discretion as to when to use, and when not to use, such weapons. The improvement of such aspects of prison administration, wherever in the Corrections Branch the responsibility lies, or has lain, is patently an immediate and high priority which should not be ignored for budgetary or any other considerations.

(b) Given that there is an inevitably high level of frustration as a consequence of incarceration, and that all routines and privileges are therefore inevitably 'sensitive', the discretion to vary the extent of such privileges is stated to be delegated to the operational level of custodial responsibility and capacity. The Commission concludes that such flexibility must exist, and that it cannot be maintained in the executive

level of the prison. There must be a more reliable and consistent means found to delegate the use of this discretion to the middle management of the prison, and ensure its consistent application.

(c) The Commission concludes that some means must be found to open prison administration to greater public scrutiny. The Commission states that it is the closed nature of prison administration and the inference of abuse which this appearance creates, which actually fuels the dynamics of prison violence. In simpler language, if it is commonly known what happens in a jail, then the incidence of violent procedure, and therefore the reasons for inquiries of this nature, would disappear.

12. Meaningful Work

The Commission concludes that in a Custodial Institution, the provision of meaningful work is essential to reduce and bring within control the level of tension and frustration which incarceration inevitably produces. The attainment of this objective is not to be taken as a substitute for rehabilitation. If the provision of such work demands greater expenditure on custodial capacity to control inmates while such work is carried out outside the secure portions of the Institution, such expenditures must be made.

13. In summation of all of the foregoing, the Commission concludes:

(a) That the objectives of the concept of rehabilitation cannot be met within the custodial environment. All that can be hoped for in the custodial environment is that the inmate can be taught to live in that environment. It is rehabilitation which teaches him to live in society.

(b) With respect to the concept of rehabilitation outside of the custodial environment, the Commission respectfully suggests that the Provincial Government give serious consideration to the establishment of facilities similar to the very promising Grierson Project of the Canadian Penitentiary Service in the City of Edmonton.

(c) The Commission wishes to emphasize that the conclusions and recommendations put forward in this Report, other than the reference to the Grierson Project, are aimed solely at the reduction of the incidence of the use of force in maintaining a custodial environment.

SECTION 1.4 GENERAL MATTERS: CONDUCT OF THE INQUIRY

SECTION 1.4.1 Information Gathering

As indicated at pages 3 and 4 of the transcript of this Inquiry, conduct of the Inquiry proper was preceded by the completion of the general investigation by Chief Inspector Arthur Roberts of the Calgary City Police. This investigation centred on the obtainment of statements from witnesses who would appear at the Inquiry, inmates, custodial personnel, and other persons.

Notice of the Inquiry was published in the Calgary Herald and the Calgary Albertan prior to the Inquiry, and Chief Inspector Roberts had announcements made over the public address systems at the Calgary Correctional Institute, advising that any person wishing to appear at the Inquiry,or wishing to divulge information,could do so by making application to contact the Chief Inspector. The Chief Inspector also circulated a notice of the hearing among the inmates of the Institution.

SECTION 1.4.2 Rules of Evidence

This Inquiry was not conducted in struct accordance with the rules of evidence, as required and operative in a court of law. From time to time, and in accordance with the demands of the particular situation, the Commissione- relaxed, waived, or made use of rules of evidence according to his own best judgment.

SECTION 1.4.3 The Use of Statements

The use of statements obtained from inmates and officers involved in the incidents in question, by Chief Inspector Arthur Roberts at the direction of the Commission Counsel, is discussed quite fully at pages 202 to 211 of the transcript of the Inquiry.

The position of the Commission as determined at that point in the proceedings, and thereafter, is generally as follows:

(a) Commission Counsel Peacock stated that statements obtained pertaining to internal inquiry at the Spy Hill Institution, or by persons other than Chief Inspector Roberts on behalf of this Inquiry, were released to all Counsel participating in the Inquiry for their information, and on the understanding that they were not to be used in cross-examination at the Inquiry.

(b) Conversely, Commission Counsel Peacock stated that information and statements obtained by Chief Inspector Roberts were released with no restriction as to cross-examination at the Inquiry, and Chief Inspector Roberts himself testified that he had informed all deponents at the time they made statements of the possibility of cross-examination during the Inquiry on the statement. He stated that he in no way suggested to any deponents that the statements he was obtaining be privileged.

(c) Copies of both categories of statements referred to above were released to participating Counsel during the conduct of the Inquiry.

(d) Ultimately, the Commissioner of the Inquiry, at page 211 and thereafter, ruled to the general effect that any of the foregoing statements referred to in the preceding were usable in cross-examination. Generally thereafter through the conduct of the Inquiry, the Commission from time to time ruled for and against the admission of statements, on the conventional grounds of admissibility, but did not exclude any statements on the basis that some form of privilege had been extended to the deponent at the time any statements were obtained.

SECTION 1.4.4 The Canada Evidence Act

At certain points in the proceedings, inmates facing the prospect of criminal charges, independently, or at the behest of counsel representing them, sought the protection of The Canada Evidence Act. At page 1271 of the transcript, a characteristic illustration of the mode in which the Commissioner explained the operation of the Act is found, which is repeated verbatim as follows:

"The moment you are asked a question and if you feel that the answer of which might tend to incriminate you, you tell me that you object to answering that question and I will then direct you to answer and then immediately you have the protection of The Canada Evidence Act.

"I cannot give it to you and I can withhold it from you, if you decline to answer a question on the ground that your answering might tend to incriminate you then you are directed to answer and your answer is automatically protected by The Canada Evidence Act, do you understand me? Answer 'okay'."

this particular investigation in the hands of the proper authorities, persons equipped to make such an investigation, and let the chips fall where they may."

SECTION 1.4.6 Disclosure of Sources

Throughout the conduct of the Inquiry, from time to time custodial staff and inmates consistently requested the Commissioner that they not be obliged to reveal the sources of certain information they disclosed. Generally speaking, this request was granted by the Commissioner. The Commission states that the reason that this policy ruling was adopted is that it is an obvious necessity to protect sources of information in the jail environment, in order that retribution not be exacted upon the informant. The nature of the prison environment is such that it is impossible for custodial staff to absolutely prohibit the infliction of violence on inmates by other inmates, and it is the view of this Commission that such retribution would have occurred if inmates and guards had been required to disclose sources of the information they put forward at the Inquiry.

SECTION 1.4.7 Description of the Calgary Correctional Institute

1. The Spy Hill Gaol, formally identified as the Calgary Correctional Institute, is a precast concrete and concrete block structure located immediately northwest of the outskirts of the City of Calgary, and accessible by Highway 1A, running west from the City of Calgary.

The Institute is approximately twelve years old and has been in charge of Warden James Francis Jackson for the bulk of that time.

The layout of the jail is indicated by the floor plans attached to this Report as Section 8.1. These plans are derived from exhibits of a similar nature entered during the course of the Inquiry. (See Exhibit 3.)

Photographs entered as exhibits at the outset of this Inquiry, being Exhibits 5 through 17, inclusive, which are available for further scrutiny for interested parties, give the best indication of the physical and architectural characteristics of the Institute, the actual nature of the areas where the disturbances investigated occurred.

SECTION 1.5 PLAN OF THE REPORT

SECTION 1.5.1 Five Incident Plan, General Matters

The investigation of the alleged excessive use of force at the Calgary Correctional Institute, conducted by Chief Inspector Roberts at the request of the Commission Counsel, uncovered five separate incidents which were investigated at the Inquiry. The first of these incidents concerned a wholesale disturbance in the West Wing of the Institute on the night of July 17, 1973. The second incident involved certain disputes surrounding Inmate Brian Nurse and occurred approximately July 20. The third incident involved treatment of Inmates Harwig and Rocheleau, and occurred approximately June 24, 1973. The fourth incident involved the transportation of several inmates to the Foothills Hospital to have their stomachs pumped after the ingestion of poisonous 'homebrew' alcohol, the night of July 17, 1973. The fifth incident involved an altercation between Inmate Colymore and a member of the custodial staff on the night of August 14th or 21st, 1973. The results of the Commission's inquiry into the alleged use of force and other matters occurring in each of these incidents are separately reported in independent sections of this Inquiry which follow below.

At the conclusion of the investigation into the five incidents referred to above, by agreement of the Commission, counsel for the Commission and counsel representing all the other interests being heard at the Inquiry, it was agreed the general testimony would be heard pertaining to the general point of view of the inmates as a group, the prison staff, the prison executive staff and any correction officials in the Department of Corrections at Edmonton, plus any other outside interests who might choose to prepare briefs to the Inquiry. Counsel for the Inquiry took the point of view that spokesmen for each of these interests would be appointed to put forward the general position which each interest had adopted. This decision and mode of procedure is found at page 1504 and 1505 of the transcript of the Inquiry, and the testimony of this nature goes forward thereafter at that point within the transcript of the Inquiry.

SECTION 1.5.2 Consolidation of Evidence

The entire transcript of this Inquiry exceeds 1500 printed pages in volume. Consolidation of this material into a small enough volume to enable coherent conclusions to be obtained, with the required degree of accuracy, has been a formidable task. To balance the requirements of coherency,

consolidation and accuracy, this Commission has adopted the policy of supplying a precis or resumé of evidence as an Appendix to each separate incident as described and reported upon within the body of this report.

SECTION 2.1 FINDINGS AND CONCLUSIONS: THE WEST WING INCIDENT: JULY 17TH, 1973.

SECTION 2.1.1 Findings of Fact: Cause of the West Wing Incident

1. The Commission finds that there was a disturbance in the West Wing of the Calgary Correctional Institute on the night of July 17, 1973, which consisted of locker banging, shouting and shoe banging, and that the events which triggered the disturbance related to the manner in which the radio and lights were turned off, and the time the radio and lights were turned off. Specifically, the Commission finds that these events transpired in the following manner, as the common area lights and radio were turned off from the control cubicle.

2. There was a request from Inmate Watson to Officer Dewar with regard to leaving the radio on to listen to music, later than 10:00 p.m., that is, later than existing regulations permitted. There is evidence from custodial officers that this was demand was delivered in a threatening form. That is, Officer Dewar states that Inmate Watson said to him about this time that "They had the radio on till 2:00 a.m. the previous night and they would get it that night, one way or the other". The request from Inmate Watson was turned down by Officer Dewar.

3. Officer Dewar stated he switched off the news broadcast at about 10:05 p.m., obtained an intense reaction from the inmate population in the West Wing, telephoned the Guard Room, and was told to put the radio back on for fifteen minutes. Dewar further states the radio was left on thereafter until the news ended, and lights and radio went off until the arrival of Officer Coljee.

4. Conversely, Officer Cater states that Officer Dewar telephoned him at 9:50, and received the 'radio on' instruction at that time originating with A. D. W. Merriam. The testimony of Officer Cater and Officer Coljee establishes that Officer Coljee left for the West Wing at 9:50. Officer Coljee states that the West Wing was dark and the radio was off when he arrived there. All of this evidence strongly suggests that Officer Dewar must have turned off the lights and radio entirely prior to 9:50 p.m. on the evening in question.

5. The evidence of the inmates as a whole indicates that the lights and radio went off precipitously and early. Some inmates state that this occurred at 9:45 p.m. or 9:50 p.m., and some state they thought it occurred about 10:00 p.m.

SECTION 2.1.2 Conclusions: Cause of the West Wing Incident

This incident was precipitated by the manner in which the lights and radio were turned off on the night in question. The Commission refers specifically to the following causal elements therein, in reaching this conclusion:

(a) Discretionary late listening had been allowed at other times;

(b) It was refused on the night in question;

(c) If the radio was entirely off prior to 10:00 p.m., a denial of Regulation privileges occurred;

(d) If the news broadcast was turned off after 10:00 p.m., a similar denial of privilege occurred;

(e) Because the inmates were disinterested in news, the breach referred to in (d) was not a denial of significance but, rather, an excuse for the creation of a disturbance by the inmates.

SECTION 2.1.3 Findings of Fact: Balance of the West Wing Incident

1. The disturbance referred to in the foregoing section continued after Officer Dewar had telephoned the Guard Room. Officer Dewar states that at this point the lights were out but that he had turned the radio on. Officer Dewar then states that the news ended and that he shut the radio off as Officer Coljee came into the West Wing.

2. At this point, Officers Dewar and Coljee toured the east side of the West Wing, with the lights on, and the radio on, at 9:50 or 10:05 p.m. on the night of July 17th. The objective of this tour was to quieten the inmates. Officer Coljee attempted to shout to them with respect to what the problem was. The tour of the two officers was not successful. They were bated with verbal obscenities and the two officers therefore directed themselves to identifying the 'ringleaders' of the disturbance.

3. The two officers then referred to above then returned to the control cubicle in the West Wing, closed the security gate, turned the radio off, and then telephoned Officer Cater at the Gurad Room to ask for more help. After being summoned by Officer Cater, on arrival at the Guard Room, Officers Lynch and Peterson were issued billy clubs and flashlights by Officer Cater and told to proceed to the West Wing, but to stay in the hall and to stay out of sight and out of the way until it could be determined how the matter was going to develop.

4. Meanwhile, with Officer Dewar in the control cubicle, Officer Coljee then instructed Officers Lynch and Peterson to take up observation positions at the far southern end of the West Wing furthest from the grill gate, as they arrived at the control cubicle, to determine what was going on, and to determine where the trouble was coming from. Officer Coljee also took up a position in the Wing at this time nearer to the grill gate.

5. The evidence indicates that a threat pertaining to the use of violence against the person of any custodial officer who might enter the West Wing, which Inmate Sims admits making, and which is referred to in the testimony of several inmates and the custodial officers, occurred at this time. There is also uncontradicted evidence from Inmate Ramchuk that Officer Coljee walked up and down within the Wing

in a slow manner immediately after this threat was directed towards the officers with regard to "crossing the line" and that in those circumstances no inmate made any move toward him, and that every one of the inmates was in bed. The derisive and obscene remarks of the inmates during this interval continued.

6. A. D. W. Schlegel arrived at the West Wing just prior to or just after the actions directed by Officer Coljee in Paragraph 5 of the foregoing occurred. A. D. W. Schlegel made the decision to remove the three officers stationed in the Wing from the West Wing, because the dormitory was not quieting, and the officers were, in his opinion, in an exposed position within the Wing.

7. At this stage, A. D. W. Schlegel confirmed the identity of the apparent leaders of the disturbance from information (names and bed numbers) supplied to him by Officers Coljee and Dewar, directed Officer Cater to equip himself with a gas gun at the Guard Room, and equipped himself with a billy club. During these moments, Officer Coljee obtained billy clubs from the Guard Room, on his own initiative, or at A. D. W. Schlegel's direction, and distributed them to the bulk of the other officers present in the control cubicle area. Officer Coljee did not keep a billy club for his own use.

8. A. D. W. Schlegel then spoke to Officers Dewar, Coljee, Cater, Uterbyers, Lynch, Boughten and Peterson and possibly others near the control cubicle in the West Wing, indicating that the 'ringleaders' had to be removed from the West Wing in order to bring the disturbance therein under control. The rationale for such an extraction as a necessity was that the situation needed to be calmed. This was advanced principally by A. D. W. Schlegel with words to this effect: "If this thing gets out of hand . . . the usual thing, we will have real problems if it gets to the other wings and the Cell Block and I don't know how we will stop it then."

9. A. D. W. Schlegel stated that four years ago in similar disturbance, walls were broken down and some inmates beaten up. That is, if disturbance leaders are not removed, inmates who are not leaders but followers are forced to go along with this sort of activity "because of the ringleaders there, they are afraid of them". Removing the ringleaders is essential to controlling the situation because it removes the

necessity for the frightened follower to participate in a disturbance. "Getting out of hand" then means that in an uncontrolled disturbance, property damage aside, there is a risk of acts of violence and personal injury among the inmate population perpetrated by inmates against other inmates.

10. A group of officers, at a minimum those referred to in Paragraph 1 above, then entered the West Wing, further to A. D. W. Schlegel's announced objective of removing the identified leaders of the disturbance, Inmates Sims, Watson, Spooner and Winters. Prior to this entry, A. D. W. Schlegel previously instructed this group to keep their billy clubs away in their pockets and only use them if absolutely necessary.

11. The removal of Inmates Sims, Watson, Spooner and Winters occurred as follows: After A. D. W. Schlegel warned Inmate Nurse to stay in his bed because A. D. W. Schlegel felt that Inmate Nurse might have had a knife in his bed:

(a) Officer Coljee approached Bed 37 and instructed Inmate Winters, the occupant therein, to get out of bed. Inmate Winters questioned this orally but began to get out of bed forthwith. "Guiding force" was applied by Officer Coljee, that is, he grabbed Inmate Winters by the arm, either as he came off of the bed, or thereafter as Officer Coljee escorted Inmate Winters and Inmate Watson to the hall area outside the Wing. Officer Boughten states that he grabbed Inmate Winters just as he came around the end of his bed, after having shouted "let's move", that Inmate Winters did not resist, and that Inmate Winters stumbled as he came off the bed onto the floor, but did not fall. Inmate Winters states that he thereafter asked A. D. W. Schlegel or A. D. W. Merriam if he should go out. The reply was affirmative, and he then went out without his glasses on. Additionally, Inmate Winters was not allowed to put underpants on.

(b) Officer Coljee approached Bed 38 and told Inmate Spooner, the occupant therein, to get out of bed, which Inmate Spooner then did. Inmate Spooner then started to dress. Officer Coljee then told him to go to the "front" of the Wing in shorts, and he did. Spooner was the first inmate to the West Wing security gate and the first of the four inmates extracted to move into the hall area.

(c) Inmate Watson, in Bed 40, had his hands handcuffed behind his back by an officer or officers whilst lying on his stomach in his bed, with his head under his pillow. He was raised out of his bed, was not allowed to dress, and the proceeded naked to the front of the West Wing, handcuffed, in the company of Officer Uterbyers.

(d) A. D. W. Schlegel directed himself to the responsibility of extracting Inmate Sims from the ward. Further to that purpose, he approached Inmate Sims' bed, Number 36, on the side opposite the space where Officer Boughton was operating. That officer had entered the Wing and begun his extraction duties in a position directly behind A. D. W. Schlegel and concerned himself first with the extraction of Inmate Winters. A. D. W. Schlegel walked in between Inmate Sims' bed and the next bed and stated: "Sims, get out of bed. You are going to the bos." Inmate Sims replied in words to this effect: "What for? What did I do?" A. D. W. Schlegel then removed his billy from his pocket and stated words to this effect: "Sims, I told you to get out of bed, get moving." A. D. W. Schlegel states that these requests were close together in time and that Inmate Sims had time to react to both of them.

At this point, A. D. W. Schlegel states that Inmate Sims said something, and that his hand came through or out of the bedding. Inmate Sims was then struck by A. D. W. Schlegel on the soft upper right arm. Inmate Sims was turning, trying to get out of bed. A. D. W. Schlegel states that he felt Sims was going to hit him or strike him in the face, and that he was operating under the belief that Inmate Sims might have had a knife in the bed. A. D. W. Schlegel further states that he hit Inmate Sims a couple of times after that after he jumped out of bed, because Inmate Sims had not moved quickly enough when told to move, because Inmate Sims could still have attacked him, even without a knife, and because even though there had been no aggressive acts by Inmate Sims to this point, there might well have been.

The testimony of Officer Boughton with regard to these events is that after he assisted in getting Inmate Winters out of bed and, hearing a scuffle behind him, he turned towards the opposite side of the bed where A. D. W. Schlegel stood, and saw Inmate Sims' arms flailing and Schlegel trying to get him out of bed. Officer Boughton states that

he saw one blow landed by A. D. W. Schlegel on Inmate Sims' arm, that then he and A. D. W. Schlegel each grabbed one of Inmate Sims' arms and moved him out over the end of the bed. Officer Boughton testified that Sims more or less hit the floor running and headed for the front of the Wing.

The testimony of Inmate Unsworth is to the effect that Inmate Sims got out of bed when told, but that he was grabbed, pulled back down and hit on the head and shoulders on the right side from four to six times. The testimony of Inmate Cordes is that Inmate Sims stumbled out of bed onto his knees, the precise location of this stumbling action being not specifically defined, and that he was hit on the shoulder area an undefined number of times.

The testimony of Inmate Sims is that he was hit a couple of times while trying to get out of the tucked side of his bed, which was opposite to the untucked side where A. D. W. Schlegel was standing, that A. D. W. Schlegel called him an obscene name, and that he was hit a further ten or fifteen times in total, trying to get out of that side.

A. D. W. Schlegel stated that he was aware of Inmate Sims' record of violent behaviour, but had no personal contact with Inmate Sims in that regard, and that Officer Dewar had told him about the late radio threat, as the disturbance was discussed prior to a decision to extract the leaders of the disturbance.

12. There is specific testimony from Officer Lumsden that knives were found within the West Wing the morning following the incident, and that several of these knives had been sharpened, probably on concrete block walls within the Wing, in order to turn them into dangerous weapons. Some of the inmates, and some of the officers involved in this incident, in their testimony indicated an awareness of the possibility of, or rumours about, the presence of knives within the West Wing on the night in question. The source of these knives is the dining facility of the jail. The knives are entered herein as Exhibits 46 and 47.

13. The evidence establishes that the inmates being extracted from the Wing, after being removed from their beds, were taken out of the Wing without the opportunity to clothe themselves at all. Three of the inmates were naked,

a fourth had his underwear shorts on. With regard to the mode in which the inmates were removed from the West Wing, after having been removed from their beds, the testimony of the custodial officers involved refers to leading out by the arm, "walking up", "prodding along and getting them out of there", the latter phrase being meant to include grabbing by the arm, and a nudge with the hand. None of the inmates in their testimony refer to any blows being struck during this phase, but the testimony of the inmates does consistently indicate pushing and shoving. One immate refers to "scuffling", and another inmate suggests that there was some kicking.

14. Inmates Watson, Winters, Sims and Spooner arrived outside the West Wing grill gate more or less siumltaneously and stood around at that area north of the grill gate (see Exhibit 18). Inmate Sims was the last one to arrive in this area and moved over toward the other inmates. A. D. W. Merriam remained behind within the West Wing for a few minutes, and Officers Bougton and Cater also stayed behind within the Wing. Officer Boughton states that he and Officer Cater were within the Wing for about fifteen minutes and that Cater said words to this effect: "If anybody moves, he is going to let them have it." And then said words to this effect: "Anybody with clothes on . . . get them off . . . and get into bed."

15. Officer Cater states that he did not speak to any of the inmates at the point in time that they were being removed from the Wing and that he backed out after the other guards were through the grill gate, and that after he backed out, the grill gate was closed. There is no positive evidence as to whether the grill gate opened and closed prior to the time that Officer Cater left the Wing as described in the foregoing, but it is possible to infer that the gate was not closed prior to Officer Cater's exit after the completion of the extraction of the disturbance leaders. (See pages 505-506 of the transcript.)

16. Prior to the foregoing events, and just as the four inmates being removed exited through the grill gate from the West Wing, A. D. W. Schlegel came out of the Wing towards the four inmates standing outside the grill gate in the area west of the West Wing entry door, as shown in Exhibit 15, which is a view looking west. There is no indication at all of any kind of rush by the inmates at this juncture towards Officers Cater, Boughton or A. D. W. Merriam, who, by their testimony as above, were still within the Wing or, at least, on the unsecured side of the grill gate, for up to fifteen minutes, according to the testimony of Officer Boughton.

17. A. D. W. Schlegel then moved towards the four inmates in the position described above, with the professed objective of moving this group of inmates speedily towards the isolation cells within the Cell Block structure. Movement from the Exhibit 18 area north of and outside of the West Wing grill gate must have then occurred by inference, because A. D. W. Schlegel then states that he hit Inmate Sims one blow at this time, shortly after stating: "I told you to get to the Cell Block," when Inmate Sims was standing against the wall and between the two windows shown in Exhibit 14. This wall is to the right of and east of the door shown in Exhibit 15, which shows a westward view of the main entry door to the West Wing, looking into the area north of the West Wing grill gate shown in Exhibit 18.

18. A. D. W. Schlegel further states that he took this approach because he felt the prisoners might "jump me there because the other officers were not doing anything". A. D. W. Schlegel further states that he did not hit Inmate Sims again in this area at this time. A. D. W. Schlegel states that the blow he delivered was across the back, with his billy club.

19. Officer Coljee states that he did not see A. D. W. Schlegel use blows, having moved off into the hall area with Inmates Winters and Watson, and further states that Inmates Sims and Spooner were behind him and out of his line of sight for about three to four minutes for this reason. A. D. W. Merriam states he saw A. D. W. Schlegel give a prod or push, possibly with a billy in his hand, apparently during this interval.

20. Inmate Watson testified that he was hit on the shoulders with a billy club in the hall area at this interval and told to run faster. He further states that he saw A. D. W. Schlegel hitting Inmate Sims at this time in the hallway, just outside the West Wing door, which is seen in Exhibit 15. This testimony is damaged in credibility by the admission by the admission of Inmate Watson that at the time in question he was not wearing his glasses, which correct shortsightedness.

21. Inmate Winters states that whilst standing across from the Guard Room cubicle where he had been told to stand with the three other inmates, he was hit on the shoulders from the front by A. D. W. Schlegel and told to get moving. Inmate Winters states that he was hit five times and that he turned around, laughed at A. D. W. Schlegel and left. He describes these blows as "tapping". He states that Inmates Watson and Spooner had moved off first ahead of him, and that Inmate Sims was behind him. He states that he glanced

back and saw Inmate Sims beaten in a similar position by A. D. W. Schlegel about five times on the front of his body and on the shoulders, essentially in the same way as Inmate Winters had been previously struck by A. D. W. Schlegel for the purpose of getting him moving. Inmate Winters stated that the blows did not really hurt him.

22. Inmate Spooner states that he was able to move out into the main hall area, avoiding the blows of A. D. W. Schlegel and being hit only once during this interval. He further states that he saw Inmates Winters, Watson and Sims hit with a billy club within the north portion of the area shown in Exhibit 18 outside the grill gate, and the Exhibit 14 and Exhibit 15 areas, and that Winters was hit first on the arms and shoulders while he was trying to move out of that area, and that the blows were fairly hard. He stated that A. D. W. Schlegel was swearing at Inmate Winters. He states that Inmate Watson was hit on the left arm while moving out of this area. Finally, he states that A. D. W. Schlegel hit Inmate Sims in that area with Inmate Sims' back against the wall, on the shoulders and upper arms as Inmate Sims turned sideways trying to get out of the way of the blows. Inmate Spooner further states that he did not count the blows, and that he was shocked at the extent of the beating. Inmate Spooner states that Inmate Sims was saying to A. D. W. Schlegel during the beating something to the effect that he didn't do anything or have anything to do with the disturbance.

23. Inmate Sims states that A. D. W. Schlegel grabbed him in the hall, pushed him against the wall and hit him two or three times on the back. Inmate Sims further states that he asked the officer to leave him alone, and stated that he had nothing to do with the disturbance. Inmate Sims states that his reason for making this statement was to try and avoid the beating. Inmate Sims stated that he started to run down the hall toward the isolation cells, was hit several times, and kicked once in the buttocks during this interval.

24. AFter the events described in the foregoing section, the four inmates extracted from the West Wing moved off down the hallway past the Guard Room to the grill gate at the entry to the Cell Block. They were jogging or running, and moving quickly enough to be ahead of the group of guards controlled by A. D. W. Schlegel moving along behind them. The inmates waited at the Cell Block grill gate in order that it might be opened, and the guards caught up to them at this point. This grill gate was opened by the officer in charge of the main Cell Block, Officer Barron, and the inmates then moved down to where the Segregation Cells are located.

25. At that area, under the direction of A. D. W. Schlegel, the inmates were stripped of their remaining clothing, being nothing more than undershorts; their glasses and false teeth were also removed. The function of this stripping is to ensure that there are no dangerous or contraband items in the possession of the inmates before putting them into isolation cells. It is standard procedure to return inmates' clothing after such searches, but in this situation the inmates were put in the cells naked, and according to their testimony, remained there naked overnight. Most of the custodial staff testified to the effect that they did not know if the inmates' clothing was returned, giving the change of shift as the principal reason for lack of knowledg of this matter.

26. Isolation Cell Number 1 was stripped of all objects, including mattresses. A. D. W. Schlegel states that he was not positively aware of the fact that there was no mattress in the cell. The decision was taken by A. D. W. Schlegel in concert with Officer Barron, to put all four inmates in Isolation Cell Number 1. Officer Barron states that he was not aware whether or not this decision was punitive in nature, or merely based on the fact that Isolation Cell Number 1 was the only such cell available, other adjacent cells being reserved for those inmates returning from the Foothills Hospital disturbance.

27. After being stripped, the four inmates were pushed into the cell. A. D. W. Schlegel states that he jabbed one inmate with his hand, his billy club not being in that hand. Officer Coljee states that each of the four inmates were nudged as they entered the cells. Officer Barron stated that there were no striking blows with a billy club at any time by anyone, but that each of the inmates was "pushed" with a billy club as he entered the cell. Officer Barron also states that there was no resistance on the part of any of the inmates, but that they were moving rather slowly. All four of the inmates referred to in the foregoing remained in the isolation cell overnight until they were dealt with in the Warden's Court the following day. The dimensions of the cell in question are approximately six to seven feet long, and four and one-half to five feet wide.

SECTION 2.1.4 Conclusions: Balance of the West Wing Incident

1. The disturbance in the West Wing developed of its own momentum from the causes referred to in Section 2.1.2 in the foregoing. The entry of the three officers into the Wing after the tour of Officers Dewar and Coljee was a calming routine which had worked previously to quieten the West Wing. It did not have this effect on this occasion. The Commission finds that the deployment of three personnel on this basis, for observation purposes and control purposes, was not, in the opinion of this Commission, an inflammatory act or an over-reaction to the developing situation.

2. The Commission concludes that the disturbance which occurred the night of July 17th, 1973, to the extent it did develop, should not be characterized as a riot. The principal reason for this conclusion is that at no time whilst guards were in the Wing, or without the Wing, did the prisoners singly or en masse actually leave their beds in a joint and threatening manner to assault other prisoners, custodial staff or to destroy property.

3. However, this Commission concludes that given the impossibility of internally controlling a violent melee within such a large dormitory unit as the West Wing, and given the threat of possible development of such a violent melee, once it was reasonably apparent that the West Wing could not be calmed by a custodial presence within the Wing, or by attempted concessions or conciliation with regard to the use of the radio, the staff on hand were fully justified in taking the decision to remove those inmates whom they believe to be the 'ringleaders' of this disturbance. The Commission finds that the wisd om of this decision was confirmed by the simple fact that the extraction of the leaders of the disturbance brought the West Wing under immediate control.

4. The Commission concludes that there was no use of force, other than pulling inmates in question by the arm or arms with regard to the extraction of Inmates Winters, Watson and Spooner from their beds and that this means of procedure was not an excessive use of force in all of the circumstances.

5. The Commission concludes that force in the form of blows from a billy club was used by A. D. W. Schlegel on Inmate Sims to persuade him to get out of bed quickly, further to the purpose of removing him from the Wing. There is conflict in the evidence with regard to how many blows were actually delivered. The Commission finds that a minimum of three blows were certainly delivered to the shoulder and upper arm area of Inmate Sims' body.

6. The Commission further finds that the force used by A. D. W. Schlegel as referred to in the foregoing paragraph was fully justified, given the possibility of a knife being in Inmate Sims' possession, and given that a prolonged and quarrelsome extraction from the bed might have produced a riot situation where the officers in charge might have been taken hostage, and might have faced the prospect of injury or death thereafter. In all of the circumstances, A. D. W. Schlegel and the other officers present in the West Wing on the night in question were justified in using the means they did to remove the inmates concerned from the West Wing, with all possible haste.

7. The Commission concludes that A. D. W. Schlegel administered a blow with a billy club to the upper body of Inmate Sims, further to his purpose of moving the inmates out of the West Wing lobby and towards the Segregation Cells.

8. This Commission concludes that the inmates placed in Isolation Cell Number 1 were not provided with a minimum quantity of clothing to ensure their bodily comfort until the following morning, and that clothing is ordinarily returned to inmates after a search for contraband material is undertaken prior to placing them in the isolation cell in question, and that they were not provided with a mattress. The Commission concludes that these events are not related to the terms of reference of this Inquiry pertaining to the excessive use of force.

SECTION 2.2 SUMMARY OF EVIDENCE: THE WEST WING INCIDENT

Section 2.2.1 Location of Witnesses, Background, Role, West Wing Incident.

Jack Thomas Gale Watson

1. Location: Bed 40 West Wing, sentence now served, living at Coronation, Alberta, sentence of about 8 months, 7 months served at the time of the incident, had been charged with dangerous use of a firearm and causing bodily harm.

Daniel James Winters

1. Location: Bed 37 West Wing (now released), sentence was for one year, possession of stolen property.

Robert Earl Sims

1. Location: Bed 36 (still incarcerated), sentence about 21 months since January 31, 1973, nature of charges resulting in conviction; threatening to kill, possession of dangerous weapons, and escaping.

Gary John Fredrick Spooner

1. Location: Bed 38 West Wing, about to be released, after having served sentence for breaking and entering and theft.

Donald Edward Madsen

1. Location: Bed 39, West Wing, sentenced to 6 months, possession of MDA, 3½ months served at time of incidents, now at large.

Wallace Johnson Graham

1. Location: Bed 13, on remand, charged with theft of a stolen automobile, presently an inmate. Sims bed located directly opposite his bed across the corridor on that side of the wing.

John Harwik

1. Location: Bed 53 or 55 in the West Wing, on other side of four foot wall which divides the center row of beds in the center of the wing offset a bed from the head of Sims bed. Serving sentence for one year for breaking entering, presently in Bowden.

Andrew Alfred Gunn

1. Location: probably Bed 20, charge of breaking and entering, presently at Bowden. Some distance away from the beds of Sims, Watson and Winters who were closer to the guard cubicle than he is.

Gary Ramchuk

1. Location: Bed 48, charged with "theft over", sentence of 18 months, has been charged with other offences and served time at Prince Albert Penitentiary. Head of his bed is shown in Exhibit 16 at right hand side of that exhibit, except that the bed photograph would be paralell to the others at the time of the incident in question. Lower right hand

corner of Exhibit 16 shows a table top corner which is visible in the Exhibit 18 showing view towards gate.

William Austin Kemp

1. Location: Bed 1, right in front of the dorm, sentence of one year for parole violation, 6 months served at the time of the incident. Located right across from Ramchuk, separated by the aisle, feet of their beds faced each other.

Brian Dale Nurse

1. Location: Bed 2, conviction on fraud, breaking and entering, sentenced to 2 years less a day, had served 8 months at time of incident.

Robert Unsworth

1. Location: Bed 14, in Exhibit 16, halfway down wing on left side of Exhibit 16. Serving sentence of 3 years less a day for B & E theft, served about 7½ months at time of incident.

Gunther Cordes

1. Location: Bed 51, convicted of possession of narcotics, sentenced two years, less a day, six months served at time of the incident.

Terry Dale Warr

1. Location: Bed 88, serving one year sentence for breaking and entering, incarcerated since April 27, 1973. Located on right hand side, where subject is sitting on Exhibit 17.

Guy Rooney

1. Location: Bed 11, sentenced for possession of MDA for the purpose of trafficking to 18 months, had served 3 months of sentence at the time of the incident.

Brian Keith Gregory

1. Location: Bed 9, against the center divider, Sims is three beds up straight across from the foot of his bed, sentence of this inmate is 26 months for parole violation, plus break and entry charges. Moved out to Bowden in September.

M. D. Lumsden

This Officer is a Correctional Officer one that the Calgary Correctional Institution, so employed on the 17th and 18th of July, 1973. Runs the inmates stores and tailors shop at the institution, and one of his jobs is to inspect the wings for excessive or dirty clothing which the inmates have stashed away.

John George Dewar

On duty night of July 17th, 4 to 12 shift, Correctional Officer 1,

8 years at the Calgary Correctional Institute. Officer in Charge of the West Wing, located in the observation cubicle. Ordinarily physically located within observation cubicle during shift, except to go out of the cubicle to call an inmate to leave the wing for a particular purpose. Shift ordinarily spent in the cubicle observing what is going on from 4:00 p.m. to 12:00 p.m.

Walter James Cater

Chief Guard on day incident in question, 4:00 p.m. to midnight shift, Senior C.O. 2 on duty, stationed in the guardroom. Responsibilities are placement of the Officers and seeing to the inmates needs that can be handled by self, otherwise responsibility is transferred to the Assistant Deputy Warden on shift, who was A.D.W. Merriam.

Ronald Charles Coljee

Ronald Charles Coljee has been employed at the Calgary Correctional Institute for seven years, Correction Officer 2, on day in question working 4 to 12 p.m. shift. Duties on shift work were general supervision of staff and inmates, stationed in the control room or guardroom as it is otherwise called.

States at 9:40 he responded to a message sent to the control room by Mr. Peterson who was the Duty Officer in the South Wing and proceeded to the South Wing. Being in the South Wing, hears "ruckus" in West Wing, and phones Cater to tell him that there is noise emitting from that area. Then proceeds to the West Wing.

Allan Lynch

He is Correctional Officer 1, employed at the institution 16 months, employed in the East Wing on the night in question, Officer in Charge there, at 10:30 goes for coffee break, hears commotion in West Wing, has coffee, and returns past the guardroom at 10:45.

Allan Merriam

12th year of employment at the institution, Assistant Deputy Warden, working 4:00 p.m. to midnight shift, took the responsibility to escort and supervise the transfer of four inmates believed to be involved in the consumption of poisonous homebrew alcohol to the Foothills Hospital to have their stomachs pumped. The time of return from this job was approximately 10:45, at which time he proceeded down the West Wing of the institution seeing Mr. Schlegel and officers going into the wing.

Charles Albert Boughten

Employed at the institution for fifteen years, Corrections Officer, was on midnight to 8:00 a.m. shift that day, back in at 10:30 the evening in question because telephoned by Mr. Cater.

On arrival at the jail at about 10:30, went directly back to the guardroom in the West Wing. Went to the guard's cubicle and met with Schlegel, Dewar and Coljee to discuss the situation.

Vincent Oliver Upton

Correction Officer 1, three years service, working 4:00 to 12:00 shift day in question stationed in B range of the cell block. Observed the inmates that were brought in out of the West Wing, day in question, at approximately 10:45.

Harold Roy Barron

Correction Officer 2, 7th year of duty, working 4:00 p.m. to midnight shift day in question. Area of responsibility is main cell block, that is, in charge. Has a cubicle to discharge that function. In the cell block, on the first level above the ground floor. This is B level. Isolation cells are in C level on the floor below.

Thomas William Addinall

Employed at the Calgary Correctional Institute for seven years, Correction Officer 2 on duty 4:00 to midnight shift, went in early on phone request from Cater. Got called at 20 minutes to 11 at the Institute about 5 minutes to 11, went to guardroom, and through security gates and towards West Wing.

Leonard James McCoy

Correction Officer 1, eight years at the Institution, called back early before beginning on his normal midnight shift on night in question.

Goes to guardroom, issued with a billy, can't remember whether it was issued or whether he picked it up. Cater not present in guardroom at time, Ken from the Canteen was on the buttons and let him through. Goes to West Wing and catches up with group of guards including Schlegel and Cater who were already going into the West Wing from the security gates.

John Schlegel

14 years service at Calgary Correctional Institute, 13 years at the Lethbridge Jail prior to that. Assistant Deputy Warden. One of four. Other three are Merriam, Elliot and McMeakin. On duty 8:00 to 4:30 shift on the day in question. Went home after 4.30, Merriam took over, and came back into Institution on receipt of telephone call that there was guard trouble in the West Wing from Mr. Cater. Merriam not present at that time, and this Officer did not know where Merriam was. Arrived at the Institute in about 10 minutes after receipt of call which was about 10:30.

Section 2.2.2. Testimony of Inmates - Cause of the Incident

Jack Thomas Gale Watson
(Page 176, 179, 199, 201, 225)

The radio usually goes off on earlier nights, Monday, Tuesday and Wednesday at about 10:30, Thursday, Friday and Saturday about 11:00. I requested this day (Monday or Tuesday) that it be left on later. Dewar, the Guard in the cubicle says no, it goes off at the usual time. The radio went off at about 10:00 o'clock. Yelling and banging on lockers resulted, to the effect, turn the radio on, and, 10 to 15 minutes after the radio was first turned off the lights and radio came back on for about 5 minutes and then went off. The noise continued. Watson was aware of the fact that it was not usual practice for the radio to be on later than 10:00 or 10:05 on Monday and Tuesday nights. There was no real reason for the nmates to expect it to be left on later than this.

Daniel James Winters
(Page 237 - 238)

The lights and radio went off at 9:45, and usually they go off at 10:00. Someone was supposed to have gone and asked if the radio could be left on. The radio and lights were turned on for five minutes, and the noise continued, so, both were then turned off.

Robert Earl Sims
(Page 260 - 262)

The lights, radio and T.V. went off at 10:00 o'clock suddenly with no warning. This was the usual time, but normally, one bank of lights is turned off so that everyone can prepare themselves for bed. The lights came on for five minutes after going off. Sims got up out of bed to play cards during this interval.

Gary John Frederick Spooner
(Page 299 - 300)

Spooner thinks that the lights and radio went off at 10:00 o'clock. He yelled about it because at the time they went off he was standing in the urinal. Spooner knew the lights were supposed to go off at 10:00 o'clock.

Donald Edward Madsen
(Page 327 - 328)

The lights and radio were supposed to be turned off at 10:00 o'clock. Madsen and quite a few other inmates thought both had been turned off early. Most of the time on most evenings "lights on" or "radio up" is hollered when they are turned off. Usually the hollering dies down. The lights were turned on, and then off and the hollering resumed. This lasted about one-half hour.

Wallace Johnston Graham
(Page 337, 338, 342, 347)

Normally most of the lights go out when time for lights out has come,

so that if you are writing or working on a hobby, you can finish it up and put it away. The night in question, this didn't happen. All of the lights and the radio just went right off. Mr. Dewar turned the lights back on for about 5 minutes, and they went off again. Banging and yelling continued after the lights went back on. Lights out means go to bed, everyone was in their bed the second time the lights went out.

The lights usually go out at 10:00 o'clock on the weekend you can move around until 11;00, until the T V goes off. Once the T V goes off and the radio, thats when you are supposed to be in bed.

There is about 30 seconds yelling every night when the lights go out. This night it carried on, Graham thinks it is because the lights were turned out so abruptly. Graham thought Dewar was fooling around.

John Harwig
(Page 354 - 356)

Harwig stated that the lights and radio and T V went off at 9:40, or alternatively, ab out 10 minutes early, instead of being turned off gradually as 10:00 o'clock approached. The whole power for the wing was just turned off at once. Lights, and radio were turned on, everyone went to bed. They were turned off again and the noise started. Dewar was laughing at us.

Andrew Alfred Dunn
(Page 364)

The lights and radio were turned off 10 minutes early. They were turned on again for about two and half minutes and then were turned off.

Gary Ramchuk
(Page 373, 374, 381, 382

The radio went off early and then was turned on again and left running later than it should have been to make up for the early time off, then it went off. The noise continued and the lights came on. All this took about 20 minutes. In Ramchuk's opinion, if the lights and radio had been left off, the noise would have subsided. Ramchuk states that Dewar laughed at the inmates during this process.

Brian Dale Nurse
(Page 394)

The lights and radio were turned off early. The duty guard started laughing and switching the lights and radio on and off.

Robert Unsworth
(Page 401)

The T V, radio and lights went off early together approximately 10 minutes ahead of time, the cubicle guard laughed at the ensuing racket, and turned the radio on low. Later the television and radio were turned off. There is usually some noise for a short period of time every night when the lights, radio and T V are turned off.

Section 2.2.3 Testimony of Custodial Staff: Cause of the Incident

John George Dewar
(Pages 454, 455, 467, 471, 478, 488)

The procedure during Dewar's tenure at the jail is that at 10:00 o'clock the T.V. and radio go off, but that from 10:00 to 10:15 the news broadcast is allowed. Dewar says this means T.V. and main lights go off at 10:00, except for wash basin lights and so forth, so people can get ready for bed. This is more or less a warning that lights are going off in fifteen minutes. At the end of the news braodcast everyone is pretty well in bed and the radio and the remainder of the lights go off.

Dewar further states that this evening at 10:00 o'clock the radio was switched by himself from music, on CKXL to news on CFCN, and the main lights turned off. One bank of lights over the wash room and urinal area was left on at this time, as well as the two white bank lights. At 10:05, the radio was turned off by Dewar after his visual observation of the washroom and urinal area to see if anyone was in that area, and because of the vocal objections of the inmates to listen to news rather than music.

Dewar further states that in the face of the developing disturbance after having turned off the radio and lights as in the foregoing, he telephoned the guard-room and received the message from Cater through Merriam to turn the radio back on for 15 minutes.

Dewar also states that on occasion when asked by inmates to turn the news off at 10:00, because the inmates have already seen the news on T.V. at 6:00 o'clock and because the inmates prefer CKXL music to CFCN news in these circumstances. On this evening, inmate Watson states to Dewar, "that they had the radio on till 2:00 a.m. the previous night and they would get it that night, one way or the other".

Walter James Cater
(Pages 493, 529)

Dewar states to Cater during the 9:50 telephone call as follows "All hell has broken loose". Further, Cater states under cross-examination finally, that Dewar had told him the radio was "off" during the 9:50 telephone call. Previous testimony of his indicated that Dewar had said the radio was "switched". In any case, under Mr. Merriam's instructions, Dewar was told to turn the radio on for 15 minutes by Cater during that call.

Cater states that the inmates have the right to have the radio on until 10:00 o'clock and that the radio was turned off or switched off prior to the usual time. Cater states that the program is switched at 10:00 o'clock unless there is a request in the cell block for a change to a particular channel. Cater also states that at the time he ran a wing he would grant such special requests.

Ronald Charles Coljee
(Pages 540 - 578)

Coljee states that at 9:40 he responded to a message sent to the control room by Mr. Peterson who was the Duty Officer in the South

Wing, and proceeded to the South Wing. Being in the South Wing, hears "ruckus" in West Wing, and phones Cater to tell him that there is noise emitting from that area. Cater than proceeded to the West Wing. On arrival the lights are out. Tells Dewar to turn the lights on. Much noise. "there was beds back and forth, pounding on lockers, so on and so forth".

After telling Dewar to put the lights on he proceeds down into the wing, and notices the radio is off. Has the radio put back on. Can't hear it anyway because of all the noise being made. Dewar and Coljee walk down each side of the wing. Coljee yelled to ask the inmates what the problem was, but not heard in the noise.

Section 2.2.4. Testimony of Inmates: Balance of Incident.

Jack Thomas Gale Watson
(Pages 184, 235)

1. Disturbance Activity:

Yelling and banging on locker, personally at Dewar, and then at Coljee, obscenities, re turning the radio on, etc.

2. Extraction Circumstances:

Handcuffed while in bed, behind back, told to get out of bed. Not allowed to put pants on, therefore naked, goes to "front" and stands there.

3. Hall: Events

After standing in hall area outside wing runs down hall towards "hole" on direction, being hit a few times on the shoulders and told to run faster, with a black club. At the "hole", handcuffs are removed and is pushed into the cell. Removed the next day, a plea of guilty creating a disturbance, in Wardens Court, lost "three days good time".

4. "Hole": Events

In the cell overnight, no mattresses, blankets, anything, self and three other occupants all naked.

5. General:

(a) Saw Schlegel hitting Sims in hallway facing him on upper part of body with Sims arms up protecting himself, in corner just outside doorway of the West Wing, hears Sims indicating the had nothing to do with the incident.

(b) Was handcuffed in bed, wears glasses, and had no opportunity to put them on, examination of glasses under cross-examination indicates myopia.

(c) States not struck in the West Wing at any time, had not resisted at any time, but blows on him were limited to hallway.

(d) Had heard rumors re presence of knife or knives in Wing but no knowledge of presence of same on day in question.

(e) Had heard there was supposed to have been a request earlier that the radio be left on later.

(f) Had smelt "hash" ordor in the wing that evening, but had not used any himself at that time.

(g) Heard threat regarding violence on guards if they crossed the line just prior to their entry into the West Wing to

the effect the extraction of the ring leaders, but does not state that he knows who made that threat. The line is taken to mean the doorway leading into the dormitory.

Daniel James Winters

(Pages 235, 258)

1. Disturbance Activity:

Yelling re lights and radio back on, banging on locker and beds with boots, anticipates extraction and tapers off activity just before it occurs, because he is about to be released.

2. Extraction Circumstances:

Told to kneel in front of his bed. Winters asks Schlegel or Merriam if he should go out, responds is okay, gets up without glasses on and walked to front. Not handcuffed.

3. Hall: Events

While standing across from guardroom cubicle, where guard had told him to stand, with three others, hit on shoulders from front by Schlegel and told to get moving. Hit five times. Turns around, laughs at Schlegel and leaves. No bruises or injuries as a result. Described as "tapping". Watson and Spooner have moved off first ahead of him. Sims is behind.

4. "Hole": Events

Of the four removed, Watson and Ives naked, the others have undershorts on. Not hit there or in that area.

5. General:

(a) Hears lets make a "ruckus" remark near him when radio goes off early.

(b) Wears glasses, not on.

(c) Reasons for participation are to avoid censure by fellow inmates plus, the possibility of getting the lights on.

(d) Unaware of the other hospital incident of the same evening.

(e) Knew of no weapons present at that time but had heard rumors.

(f) See Sims beaten by Mr. Schlegel from front as Sims attempts to get out of bed, in shoulder area, Sims saying "I am getting out of bed, I am getting out of bed", or something of that nature.

(g) Heard the threat regarding cross-over the line, or words to that effect originating near him, but does not identify source.

(h) Sees Sims beaten whilst glancing back behind him in hall by Schlegel, five times on front of shoulders, essentially in the same way he was previously struck by Schlegel to get him moving. States that the blows did not really hurt him.

Robert Earl Sims
(Pages 258, 297)

1. Disturbance Activity:

Participated in lights and radio back on, noise banging, and obscene baiting of guards investigating disturbances. Got up to play cards when lights went back on. Whilst still up, sees guard group coming. As gate is opened for guards group to enter yells "you cross that line and your dead". States "I wasn't serious or anything, but that's just what I yelled out". States there wasn't any leader of disturbance, almost all inmates involved.

2. Extraction Circumstances:

Lying on back in bed, tucked in. Schlegel approaches his bed, hits him twice with billy club on shoulder and side of neck. Merriam not involved in these attacks to his knowledge. Schlegel is on the untucked side of his bed, Sims tries to get out the other side. Hit repeatedly (10 to 15 times) whilst trying to get out that side. Tries to protect self with arms. Says nothing to Schlegel during this interval. Schlegel calls him an obscene name.

3. Hall: Events

Schlegel grabs him in the hall, pushes him up against the wall and hits him two or three times on back. Sims squirms says leave me alone, states he has nothing to do with disturbance in order to try and avoid a beating. This location is between the west wing and first grill gate beside the guardroom. Sims is the last out of bed and the first one out of the wing. Starts to run down the hall towards the "hole", is hit several times and kicked once in the buttocks during this time.

4. "Hole": Events

Stripped down naked at the entrance to the hole, sees two others already naked. Watson's handcuffs come off, and Sims is hit one more time on way into cell, severely. The guards try to hit the others, but they were able to avoid these blows. Schlegel is on one side of the entrance to the cell, and Officer Addinall is on the other.

5. General:

(a) Feels noise would have stopped after an hour or so, often occurs to a lesser degree. Knows going to the hole as a result of such disturbances.

(b) Makes a plea of guilty next day in Wardens Court and loses 10 days off privileges.

(c) Bruises not reported to medical staff.

(d) Waited 10 days to lay a charge against Schlegel, because he felt he had to figure out all the angles. He got advice from the John Howard Society and Inmate Spooner.

(e) Heard rumors regarding the presence of weapons in the wing.

(f) Sims is a long termer, relative to most of the others in the wing, and finds proximity to the short termers unnerving because of their prospects for early release. Would prefer own cell, given length of term.

(g) States didn't tell Warden about beating because Schlegel was standing right there in Wardens Court.

(h) Refers to increase in tension due to reduction in number of day passes since early June.

(i) Refers to personal tension due to recent failed escape attempt, and resultant ribbing from guards and inmates.

Gary John Frederick Spooner
(Pages 298, 325)

1. Disturbance Activity:

Standing at urinal in West Wing when lights and radio went off, therefore yelled for them to go on. Yelled further when back in bed. Saw Coljee and Lynch do inspection tour of wing. Heard the remark "cross that line and your dead".

2. Extraction Circumstances:

Coljee told him to get out of bed and he did. Started to dress, Coljee told him to go in shorts, to the front of the wing, and he did. First one to West Wing gate and first one out into adjacent hall.

3. Hall: Events

Moves out of wing through gate shown in Exhibit 18, avoiding swings of Schlegel as he does so. Moves towards adjacent hall. States he was hit once during this interval.

4. "Hole": Events

General Comment: Runs with others to cell block door at hole. Stripped naked. No. 1 Cell emptied of mattress, etc. and all other contents. As all four inmates are pushed into the cell, Spooner avoids blow aimed at each by Schlegel as they enter but bangs knee on corner of entrance in the same effort. Also kicked as going in from behind.

5. General:

(a) Sees Winters, Watson and Sims hit with billy club in area outside gate shown in Exhibit 18. States that Winters was

hit first on the arms and shoulders, that Winters was trying to move out of the area when he got hit, and was kind of facing the table shown in Exhibit 18, and that the blows were fairly hard. States Schlegel was swearing at Winters. Also saw Watson get hit going through the door. Believes that Watson was hit on the left arm. Finally, Schlegel hits Sims "through this gate here, through the doors there and up the corridor", against the wall and in the corridor, Sims back against the wall, on the shoulders and upper arms, facing Schlegel, turning sideways trying to get out of the way from the blows, and struck on the back some extent for that reason. Schlegel swearing at Sims, a number of times hit not counted by Spooner, shock at the extent of the beating.

(b) Sims says to Schlegel during the beating something to the effect that he didn't do anything or had nothing to do with the disturbance.

(c) Charged with causing a disturbance, appears in Wardens Court, pleads guilty, and gets 30 days off privileges. Schlegel, Cater and Merriam present at Wardens Court at that time.

(d) Complains of inconsistencies in the handing out of day passes, and general, difficulty communicating demands of this nature through the administration.

(e) Told John Howard Society worker Jim David about the incident the day preceding, and states that since nobody said anything about this or the incident in the Wardens Court the following day, that the matter could not have been investigated.

(f) States that David had told Merriam about the incident, and Merriam said nothing in Wardens Court about the matter.

(g) States no resistance on the part of any of the four inmates after being taken to the hall from the dormitory, no shouting or yelling at the guards.

(h) States that Schlegel basically is a well liked guard and this behaviour was out of character for him. Believes that Schlegel may have been acting on information blown out of proportion by the guards in attendance previous to his arrival and may have been "psyched up". Having been unlawfully at large, this person admits self to be a poor risk for a day pass. Aware that he can write the ombudsman confidentially if he desires. Did not write to the ombudsman about this incident. Felt it unnecessary to write because the ombudsman would have received letters about it from other inmates.

(i) Did not request to see David prior to Wardens Court. Others had requested that David come out. No medical needed. Feeling okay.

Donald Edward Madsen
(Pages 326, 335)

1. Disturbance Activity:

Yelling regarding lights and radio up, at time of incident in question, locker banging, as long as the majority of

the inmates involved in the order of half an hour.

2. Extraction Circumstances:

Not extracted.

3. Hall: Events

Not extracted and therefore no comment on this aspect.

4. "Hole": Events

Not extracted and therefore no comment on this aspect.

5. General:

(a) Believed some of the guards had flashlights.

(b) Saw no blows struck by guards whilst inmates were being moved from beds to in front of the wing.

(c) Saw Watson handcuffed on one arm.

(d) Wing quieted down after the four fellows were taken out. Lights tayed out at that time and the radio stayed off.

(e) Located pretty well in the center of the four removed. Did not think there was a particular large amount of noise in the particular area. Lights on his side of the dorm. not on at the time the prisoners were extracted, but sufficient dim light to read. Did not see Sims' bed effectively.

(f) Thought he heard a slap from the area of Sims' bed, being located about 15 feet from that bed with two beds in between, on the same row, to his right, lockers in between blocking his view of the head of Sims' bed.

Wallace Johnson Graham
(Pages 335, 351)

1. Disturbance Activity:

Not involved.

2. Extraction Circumstances:

Not involved.

3. Hall: Events

Not involved.

4. "Hole": Events

Not involved.

5. General:

(a) Saw Schlegel approach Sims bed, saw Schlegel hit Sims after Sims got out of bed, did not see Schlegel hit Sims in bed, saw Sims protect himself as he was getting out of bed putting his arms up, did not see Schlegel's blows land on Sims, and saw Sims pushed or shoved towards the door of the West Wing.

(b) Heard yelling and scuffling activity once the inmates were out of the West Wing and in the hall area.

(c) States noise ceased after the four inmates were removed, with lights and radio off.

(d) Not charged with any offence as a result of these events.

(e) States that the four inmates in question were equally involved in the disturbance, no more and no less than others.

(f) States that Sims was pushed and shoved so that "he tripped" and did not effectively regain his balance as he was moved out of the dorm. from his bed.

(g) The gist of his evidence is that Sims was moving out of bed and not resisting Schlegel in any way as Schlegel moved towards the bed, that there was no resistance from Sims.

John Harwig

(Pages 352, 363)

1. Disturbance Activity:

Yelling and locker banging after lights turned off early.

2. Extraction Circumstances:

Not extracted.

3. Hall: Events

Not extracted, therefore not applicable.

4. "Hole": Events

Not extracted, therefore not applicable.

5. General:

(a) Did not hear the threat yelled at the guards by Sims prior to their entry for the extraction.

(b) Saw Cater with tear gas gun on his side of the wing, thought it was a shot gun.

(c) Saw the handcuffs put on Watson, and generally some scuffling and shoving.

(d) Wing quieted down after four extracted, this inmate charged the next morning at 6:30 at time he takes medication at guard room.

(e) Sentenced next morning in Wardens Court to 30 days loss of privileges, and moved out of the West Wing to the cell block, then to a special dorm in the North Wing where four inmates 30 days all privileges being held, in there for two weeks, then the whole matter was dropped.

(f) Had seen knives in the wing used for buttering bread that had been "snuck" out of the kitchen, but not used as weapons. Knives were also used to paint pictures and painting with knives in the wing. Everyone in the wing has their own razor blade for shaving.

Andrew Alfred Dunn
(Pages 364)

1. Disturbance Activity:

Yelling and locker banging, along with most of the inmates.

2. Extraction Circumstances:

Not extracted, therefore not applicable.

3. Hall: Events

Not extracted, therefore not applicable.

4. "Hole": Events

Not extracted, therefore not applicable.

5. General:

(a) Hears taunting of Coljee et al as they tour the wing prior to the extraction.

(b) Banging on own bed during this interval, sees one guard standing over Sims bed, "where Sims head was" identifies him as Schlegel. Did not see anybody get hit. Saw the guards shoving "him" around, presumably Sims.

(c) Sees inmates generally pushed and shoved front door and out of the gate.

(d) Hears hollering down the hall.

(e) Plays cards until lights go on for the second time, and knows he is not supposed to do this.

(f) Charged with an offence for creating disturbance, pleads guilty and gets a sentence of five days loss of privileges before Warden Jackson.

Gary Ramchuk
(Pages 372, 388)

1. Disturbance Activity:

Laying in bed, not involved.

2. Extraction Circumstances:

Not extracted, not applicable.

3. Hall: Events

Not extracted, not applicable, see general below.

4. "Hole" Events

Not extracted, not applicable.

5. General:

(a) Does not see any blows during the extraction of the four inmates from their beds, but does refer to one inmate being pulled from his bed. Saw one inmate slapped on the head, with an open hand as the group passes near his bed. Does not know who delivered the slap. No conversation by guards or prisoners as the group moves by him, one push of one fellow. Saw no activity outside the hall door, because it is impossible from his view point, this is evident from Exhibit 18. Last view is after group goes through the gate.

(b) Hears "some of the fellows screaming" as group is into the hall outside his view. Hears "ow" very loudly.

(c) Banging and yelling ceases after four extracted.

(d) Has heard disturbance of this magnitude before, but not seen it last this long.

Felt this disturbance was the work of a handful of inmates, and would expect a little violence from the guards in such circumstances. These expectations developed from previous incarceration experience of this inmate. Does not feel that physical abuse on the inmates is necessary this night to subdue them.

(e) Feels the word "ow" was consistent with people that were under some form of pain. Formed opinion in own mind that some sort of blow was being inflicted upon some person at that time.

(f) Did see billy clubs in the possession of some of the guards. Also saw the gun of some sort, felt it was a tear gas gun.

(g) Feels that if the lights and radio were left on and nothing done that the incident would have subsided eventually.

(h) States that Coljee walked up and down the wing slowly immediately after the threat was directed at him with regard to crossing the line, and that in those circumstances nobody made any sort of move toward him, that everyone was in bed.

(i) Makes a statement to the effect that some of the tension in the wing is due to the fact that so many men, namely 96 inmates, are locked up in one large area.

(j) States that sexual offenders or deviates, are not necessarily persecuted by the general inmate population.

(k) Agrees that a way to stop commotion is to remove "small group", although he does not single out that one group is responsible for all of the noise, but makes most of the inmates responsible.

(l) Accedes to the statement that if an inmate would not go to the hole when requested to go there, that a guard might be obliged to use some force to get him there.

William Austin Kemp
(Page 390)

1. Disturbance Activity:

Not extracted.

2. Extraction Circumstances:

Not extracted, not applicable.

3. Hall: Events

Not extracted, not applicable.

4. "Hole": Events

No comments, not extracted.

5. General:

(a) States 14 guards entered the wing at the time of the extraction, four inmates grabbed from their beds and escorted out of the dorm. One handcuffed, States one inmate was handcuffed and pulled bodily out of bed.

(b) Did not see anybody struck.

(c) Sees billy sticks as group is removed fromthe dorm, in pockets, not in use. Group of guards block his view considerably.

(d) Hears one smack and one yell in the hall.

(e) States noise ceases after removal of the four persons in question.

Brian Dale Nurse
(Page 394)

1. Disturbance Activity:

Not extracted.

2. Extraction Circumstances:

Not extracted, no comment.

3. Hall: Events

Not extracted, not applicable.

4. "Hole": Events

Not extracted, not applicable.

5. General:

(a) Hears the threat "if you cross that line your dead". Does not know who delivered it.

(b) States a group of guards rushes in, grab the four inmates out of the beds, handcuff one man, push him down a tier and take him out.

(c) States a fair portion of the inmates were yelling and banging on lockers.

(d) Generally states that the inmates were pulled out of bed, but does not see any of them struck at this time.

(e) Schlegel comes to his bed with billy club in his hand, says he has something in his bed he shouldn't have Nurse states he doesn't, and Schlegel then says if you did have anything in there to get it out of there in the morning. Feels that he thought that Schlegel thought that he had either dope or a knife. States that he had no dope and no knife in his bed at this time.

(f) Did not see Schlegel do anything, mostly watching Cater with tear gas gun, states "he was poking it right in Ramchuk's knees you know".

(g) States inmates were pushed and kicked out of dorm. but not hit as far as he could see.

(h) Hears yelling and screaming in the hall.

(i) States noise stopped when four inmates were extracted.

Robert Unsworth
(Pages 399, 414)

1. Disturbance Activity:

Not involved and not extracted.

2. Extraction Circumstances:

Not extracted.

3. Hall: Events

Not applicable, not extracted.

4. "Hole": Events

Not extracted, not applicable.

5. General:

(a) Sees 15 guards enter to do extraction, at least half a dozen carrying billy clubs in their hands.

(b) Hears "step over that line and you are a dead cocksucker"threat. States that threat was made prior to guard group entering wing, that is "when they were out".

(c) States that Sims was grabbed as he was getting out of bed or trying to get out of bed, and that the guard in question "pulled him back down and hit him with a billy club on the head and shoulders on the right side". States that Sims was hit four to six times in his bed. States that Sims did not jump out of bed as a guard approached. States that when he was told to get out, he was getting out. States that the guard put him back down in his bed and hit him about 6 times. No question that he hit him with a billy club, this inmate saw the billy club hit him.

(d) Sees pushes and shoves going out of the wing.

(e) Heard screams outside of the wing coming from the hall.

(f) Saw one guard strike Winters in the wing, but did not see whether it was a billy club or a fist.

(g) States there was tension as day passes had been refused consistently.

(h) Was aware that there were knives in the wing that night. Did not see any of them, merely aware of them.

(i) Feels the inmates showed a lack of courage and should not have backed down when the guards were beating on the other inmates.

(j) States that the disturbance ceased when the four were removed.

(k) States that the guards acted properly in taking the four gentlemen out, but disagrees with the manner in which they were taken out.

(l) States heard agonizing short screams in hall outside of wing, consisting with someone receiving pain or being injured. Did not hear whacks.

(m) Not charged as a result of this incident.

(n) On questioning feels that use of force in means described above by the guards might well have precipitated a retaliation by the inmates.

Gunther Cordes
(Pages 417, 419)

1. Disturbance Activity:

Not applicable

2. Extraction Circumstances:

Not applicable, not extracted.

3. Hall: Events

Not applicable, not extracted.

4. "Hole": Events

Not there, not applicable.

5. General:

(a) States there was scuffling all the way out of the wing, and once the group extracted and the guards covering them were out of the way there was some screaming.

(b) States that he stayed low because Cater was right by his bed with the gun.

(c) All he observed really was the sounds as the guards came in and went out. Yelling and screaming heard is confined to the hall. Only hears scuffling within the wing.

Terry Dale Warr
(Pages 420, 426)

1. Disturbance Activity:

Not applicable.

2. Extraction Circumstances:

Not applicable

3. Hall: Events

Not extracted, not applicable

4. "Hole": Events

Not there - not applicable.

5. General:

(a) Observes entry of about 12 guards into the West Wing to observe extraction, and the positioning of Cater with a gas gun, hears Cater's statement that no one should move or he would use the gun, or words of that import.

Sitting on bed, hears commotion, wants to see what is going on. Guards are on other side of partition. Sees swinging motion by guards over a couple of beds. Does not see what they were hitting. States that the main lights were off, but night lights were on, i.e. those around the wash room and "stuff" like that were on. Not able to identify the guards where using clubs. Sees no blows on the way out. Hears screams and pain or moans after group have left wing, but does not observe any causes or supporting sounds.

Guy Rooney
(Pages 426, 434)

1. Disturbance Activity:

Not applicable

2. Extraction Circumstances:

Not applicable

3. Hall: Events

Not there, not applicable.

4. "Hole": Events

Not there, not applicable.

5. General:

(a) States with regard to Sims removal "they dragged him out of bed and I was watching Sims and I remember a club but there was only one club I seen". States that Sims bed is about three beds down from his, across the corridor.

(b) States that he saw Sims go on his knees or ducking or something like that. States that this was after Sims got out of bed part way and that he subsequently got up, and got out. He states that the inmates were shoved along out of the wing.

(c) States that he heard screams after the inmates left the wing.

(d) States that the noise ceased after the inmates were extracted.

(e) In total, the effect of his testimony is that Sims could have been hit, but this inmate did not see what was delivered.

Brian Keith Gregory
(Pages 434, 440)

1. Disturbance activity:

Not applicable.

2. Extraction Circumstances:

Not applicable.

3. Hall: Events

Not extracted, not applicable

4. "Hole": Events

Not there, not applicable

5. General:

(a) Schlegel is in the lead as the guards come in to make the extraction. The inmates who were to be extracted are directed verbally to get out of bed. Schlegel approaches Sims stating "get up you little bastard". Schlegel makes a movement to grab Sims under the arm but misses and hits him in the chest. There is no club in his hand. As Sims scrambles to get out of bed, Schlegel hits him about twice, not stated whether with club or not. During this scramble to get out of bed Schlegel accidently shoves Sims so that Sims stumbles to his knees as he gets out of bed. Sims is on his knees, he is hit by the other guard in the shoulder area an undetermined number of times. This guard is facing Sims. This inmate states that Sims was handcuffed before he was taken out of bed, and that he was the only inmate handcuffed.

(b) The inmates were then moved down the wing with shoves and out the gate.

(c) Hears smacks, hollering "get a move on" noises from outside of the wing and hallway.

Section 2.2.5 Testimony of Custodial Staff, Balance of incident.

F. D. Lumsden
(Pages 440, 447)

This Officer is a Correctional Officer, one that the Calgary Correctional Institution so employed on the 17th and 18th of July, 1973. He runs the inmates stores and tailors shop at the institution, and one of his jobs is to inspect the wings for excessive or dirty clothing which the inmates have stashed away. On July 18th, this Officer and A.D. W. Schlegel inspected the West Wing, purposes referred to above, and to determine if there was any contraband (knives, excessive cups, cutlery) in the wing. The result of their search is that they picked up a carton load of clothes and two table knives entered herein as Exhibits 46 and 47. The rule of the institution that there were no knives or instruments of this type allowed in the West Wing. These knives are from the dining room. One of the knives, being Exhibit 46 had been rubbed to some extent on a stone or a brick wall of the institution. The knives can be used for cutting leather or cutting another inmate or "cutting" officers of the institution. In the experience of this Officer, it is common for ordinary table or butter knives of this nature to be rubbed on concrete blocks and thus turned into lethal weapons, everyone in the institution knows this. The sharpened knife being Exhibit 46, was found on the side of the wing close to the window.

John George Dewar
(Pages 448A - 491)

1. Disturbance Role:

After the disturbance had developed, probably at least as late as 10:30, another guard Coljee and Dewar walked down into the wing, Dewar on the west side and Coljee on the east all the way to the end of the wing. During this tour the two guards were abused by foul language from the inmates. The two guards returned to the control cubicle, closed the security gate and Dewar then turned the radio off under Coljee's instructions. Deputy Assistant Wardens Schlegel and Merriam are referred to as making the decision to remove the four inmates in question. Schlegel and Merriam handed out handcuffs and billys to all personnel, the same normally being kept in the guardroom. Dewar remained in the wing at all times, being told to stay in the cubicle. Dewar describes the situation in the wing with the lights on, whereby Cater comes into the wing with gas gun, he is told to stay in the control cubicle and the other officers went up the west side of the division wall telling everyone to stay in their beds he refers to the four inmates being brought out and stays in the cubicle watching Cater, Cater being the last officer to leave the wing, as Cater leaves the wing, Dewar closes the security gate. Cater is the last officer to come through the security gate. Dewar observes no detail of the extraction of the inmates from their beds and from the wing, because he is under instructions to watch Mr. Cater. Coljee and Dewar are the persons who identified the four inmates extracted as the instigators, having observed the behaviour of the inmates in the wing prior to and after their tour as referred to above. The cubicle does not afford a view of the hall. Dewar is ignorant of any rumors with regard to weapons among the inmates in the west wing.

2. Extraction Role:

Dewar has no direct or active role in the extraction being under instructions to stay in the cubicle during the whole of this event, and control the security gates, particularly with regard to closing them after the last officer, Cater, left the wing.

3. Hall: Events

Use of force: Dewar has no direct view of the hall area from the cubicle, and there is no testimony with regard to any observations he has on events in that area.

4. "Hole": Events

Dewar has no observations on events in this area having remained at his station in the cubicle until the end of his shift at midnight.

5. General:

(a) Dewar testified to the effect that the reason for the presence of only one guard in the cubicle supervising the whole wing, is that the institution is short staffed, but he also testified to the effect that the presence of larger numbers of custodial personnel makes the inmates "uptight".

(b) Dewar testified that abuse of guards with the use of foul language is a common phenomenon, and in his case, is not regarded as provocative or upsetting as a rule.

(c) Dewar testified that the guardroom, when they instructed him to turn the radio back on, were not appraised of all of the circumstances of the situation in the west wing.

(d) Dewar states that during the tour of the wing by himself and Coljee, no one was out of bed, nothing was thrown at him and there was no offensive force directed towards him of any kind, merely verbal abuse delivered in such a manner that the guards could not identify its source.

(e) Dewar testified that he is generally respected by the inmates because he treats them equally, without favour.

Walter James Cater
(Pages 493 - 529

1. Disturbance Role:

At 9:50 the evening in question received call from Dewar with regard to noise in the West Wing. Cater then relates facts pertaining to Merriam's departure with regard to taking other alcohol sick inmates to the Foothills Hospital, and some detail with regard to anticipated difficulties in the south wing covered off by Officer Coljee. Cater than states that the noise in the West Wing as the next development is discernible guard room. Cater therefore phones Mr. Schlegel who is the nearest Deputy Assistant Warden at the time, Merriam being departed to the Foothills Hospital. Cater

also calls in eight guards from the midnight shift to assist if necessary. During this interval he receives another phone call from Coljee to say that the problem seemed to be quite serious, Coljee being by this time on location in the west wing with Dewar. Schlegel arrives, and he and Cater leave the guard room in the hands of another party, and go down to the West Wing, where Cater relates that circumstances are in a uproar, and this is the worst disturbance since the riot in 1961. He states that three guards were standing in the wing which he felt was stupid on their part and states that Schlegel did too. He states that boots were being picked up and that there was evidence of boots and other odds and ends being thrown. Three Officers were within the grill gate separating the wing from the rest of the jail. This grill gate is shown on Exhibit 18. Cater says that Schlegel says "things look pretty bad don't they?", and then Coljee tells Schlegel who the ring leaders are along with Dewar. Schlegel then takes the decision to take the four inmates in question out being Spooner, Winters, Watson and Sims. The group returns to the guard room to pick up gas equipment, being billys, gas guns, etc. See Exhibit 38 and Exhibit 37.

2. Extraction Role:

Cater relates that his role is to enter the wing with the gas gun. He puts a cartridge in the barrel but breaks the barrel in order to avoid accidental discharge. This is the procedure he has taught the Correction Officers in Edmonton. Gun is issued in the guard room. Cater is about the third one into the wing and stations himself on the west side of the wing with gun in hand. States "I have got a fucking gun here so stay where you are" . On this statement five inmates who are coming up towards Cater immediately return to their beds. Everyone stays in their beds, Cater stands over Bed 49 which is the first bed on the right hand side, being the west side. Cater relates that he was "so damm scared" that he did not watch or pay attention to the extraction of the four inmates in question by the other officers from their beds. He states that he was standing in the wing in the manner recited in the foregoing for about ten minutes. Cater backs out after all of the other guards have gone out with the prisoners, being "a bit scared myself" and backs out. The grill gates were closed after this event. Cater stayed in the West Wing cubicle thereafter for about 15 minutes.

3. Hall: Events

Cater was in the cubicle, and in the wing, and did not observe the guards taking the inmates down the hall away from the West Wing.

4. "Hole" Events

The same applies here, for the foregoing reason.

5. General:

(a) When Dewar phoned Cater in the guardroom at 9:50 he described the situation in this manner "all hell has broken loose".

(b) Cater states that he was aware of the possibility of the presence of knives in the wing because he was appraised of this possibility by Merriam, having met Merriam in the guard room as Cater and Schlegel and the others obtained the billys and gas equipment from that area.

(c) Cater's testimony indicates that he and Schlegel took the decision to go to the guardroom obtain gas billys, and the gas gun prior to the return of Merriam to the jail. Merriam is placed in the desision sequence as arriving at the guard room as Schlegel, Cater and the others were obtaining the weapons, and warning all of them about the possibility of knives being present in the West Wing.

(d) The effect of Cater's testimony is to suggest that the reasons why the group in which he was involved went back to the guardroom to obtain gas billys and the gas gun, were that some means had to be found to stop the disturbance by removing the ring leaders, because other officers were within the west wing, and finally, because when they arrived at the guard room they were warned by Merriam that there might be knives in the wings.

(e) Cater's evidence is that Schlegel assigned him the role of operating with a gas gun, because he was not "trigger happy", and because he was more experienced than some of the younger guards.

(f) Cater saw no other guard or officer of the institution strike an inmate during this incident.

(g) Cater saw no menacing move made toward any guard by any inmate.

(h) The left hand side bank lights were on during the extraction, this being one of the four main banks.

(i) Five men who were approaching Cater as he entered with the gun at the start of the extraction were not in clearly menancing postures.

(j) It is against regulations for inmates and guards to swear at each other, Cater states that it does occur.

(k) Cater had seen the 1961 riot, where the North Wing was ripped apart internally.

(l) Cater states that the institution was short staffed, that is there should have been a minimum of 17 men on the shift and there were 14 men on the shift. Additionally, two men had to be sent to hospital, one man who was supposed to have left at 9:00 o'clock was kept over, and the other man was brought in to assist in taking the four prisoners involved in alcoholic poisoning to Foothills Hospital leaving 12 men on shift.

(m) Cater states that from time to time the guard room receives anonymous phone calls suggesting that the jobs of the custodial staff are on the line.

(n) Cater states that the inmates are entitled to assume that they will have music until 10:00 o'clock and that ordinarily it is switched in the absence of a request from the cell block to leave it on a music channel. The granting of such request is within the discretion of the guard on duty. Cater states that there is no explanation for the radio being turned off or switched ten minutes prior to 9:00 o'clock. Cater states that he did say to Dewar that the radio should be kept on until 10:00 o'clock. Cater states that he instructed Dewar to put the radio back on under instruction from A.D.W. Merriam.

(o) Cater states that he would give the men a special programe if they wanted it at the time he ran the wing, some six years ago, that this statement is made without reference to whether or not such requests were being granted before or after the regulation time, 10:00 o'clock, when music programes were to be turned off.

(p) Cater states that in abnormal circumstances, it is not prudent for custodial staff to move out of the cubicle and into the wing, but that in normal circumstances this does occur.

(q) Cater states specifically that dormitories this size are not a satisfactory way of housing inmates. He states that the proper size is 12 to 24 inmates. The reasons the size is too large is that incitement of the mass of inmates by a small number of inmates is easy, equally supervision of any form of activity by staff is difficult. An example of difficulty in supervision is referred to by Cater, wherein it is discovered that glue sniffing is going on within the wing, because some of the inmates within the wing are allowed painting and finishing privileges. Cater further states that he has suggested from time to time to the Warden and to Mr. Stanton that the size of the dormitory should be cut in half. He further states, that there were six dormitories in the space presently constituting the West Wing, but the separating walls were made of plywood, and that these walls were smashed to pieces by the inmates in the 1960-61 riot. After this riot the whole wing was opened up and left as a 96 bed unit. It had been designed to hold 6 - 16 bed dormitories. Cater states that the present dormitories could be properly supervised, if there was lots of glass i.e. sufficient portions of the walls are made out of glass so that you can look in on through the dormitory and have a view of the whole area. Cater further states that the inmates are happier in such an environment, this being the way the North Wing is presently designed. The inmates do not feel as pushed and crowded, and such a dormitory is not "like a snake pit".

Leonard James McCoy
(Pages 612 - 624)

1. Disturbance Role:

Called back early before beginning on his normal midnight shift on night in question.

2. Extraction Role:

Goes to guard room, issued with a billy, can't remember whether it was issued or whether he picked it up. Cater not present in guard room at time, Ken from the canteen was on the

buttons and let me through. Goes to West Wing and catches up with group of guards including Schlegel and Cater who were already going into the West Wing from the security gates. He catches up to them. Moves down with group to bed 3 or 4 just inside the wing. On the east side watches inmates along the east wall from Bed 20 or 19 to watch to see that they don't get up. "I didn't know what was going on or how many men were going to be moved out or if any was going to be moved out. Basically just joined a group of guards as they went in. No one told us to do anything, I was just kind of in the dark" . Knows inmates are being extracted but is concerned with protecting them from behind on the other side. Sees scuffle between Schlegel and one of the inmates. Offers no further specifics regarding blows. See group go out with four inmates and then "more or less hung around not knowing what to do". The inmates in shorts as they were taken out.

3. Hall: Events

Gets out of wing and into hall and sees Schlegel, Yutebyers and group of inmates going up the hall, "so I figgered I would join in with them". Winds up following this group. Just two guards, Yutebyers and Schlegel behind the four. Saw no scuffle or blows or anything of this nature in the hall. States that group is quite a ways in front of them.

4. "Hole": Events

States that Barron is Officer in charge of cell block, was there along with Schlegel and Yutebyers as the group arrives. Sees a couple of the prisoners being stripped, there is no force or scuffling at that time, saw no blows as group of prisoners were put into isolation cell by guards.

5. General:

As group moved away from West Wing down hall, there is a period of time that the group was not within this man's line of sight. Basically this man walked into the West Wing on his own, not knowing what was going to take place or what had taken place because "I was called in for extra duty and I was told in the guard room they were expecting trouble in the West Wing".

John Schlegel
(Pages 627 - 668)

1. Disturbance Role:

On duty 8:00 to 4:30 shift on the day in question. Went home after 4:30, Merriam took over. Came back into institution on receipt of telephone call that there was guard trouble in the West Wing from Mr. Cater. Merriam not present at that time, and this Officer did not know where Merriam was. Arrived at the institute in about 10 minutes after receipt of call which was about 10:30.

2. Extraction Role:

On arrival at institution goes to guardroom and asks Cater what is the matter. Cater says we have trouble down in the

West Wing. Cater and Schlegel go to the West Wing and notice the Officers stationed within the wing in different areas. The Officers are Lynch, Coljee and Peterson. Dewar is in the cubicle. Makes decision to get the three Officers out of the dormitory because it is not quieting down. The Officers come out upon a signal, the gate is then locked. Schlegel and Cater return to the main guard room and talk it over. Schlegel decides to do something about the situation tells Cater to take the gas thrower and says he will take a billy club himself and the two of them will go back down there. Some of the other officers come to the guard room and follow them back.

Schlegel goes to control booth and asks Dewar if he is certain who ring leaders are. Dewar says "yes" and supplies names of Sims, Spooner, Watson and Winters. Coljee and Boughten are near the cubicle and confirm this identification of ring leaders. Schlegel states there was a "you come in here and you are dead" threat at this time.

Schlegel states to the group around him words to this effect "look we have to get the ring leaders out if this thing gets out of hand, the usual thing, we will have real problems if it gets to the other wings and the cell block and I don't know how we will stop it then." Schlegel also states to this effect "I have been in these situations before and we have to get the ring leaders out and I am sure we can stop the racket".

States he directed a group of fellows around him to come with him, tells those with billys and clubs to put them away, and "use them only if you absolutely have to". States that he has a billy in his pocket, right hand, front pocket. Schlegel states that he indicated his intention to go down to the furthest person in there, being Inmate Sims. From Schlegel's testimony, this form of leadership seems to be related to the rumors of weapons. States that Coljee and Dewar have been told about these weapons.

Schlegel states that when he went in he was a bit afraid of an inmate jumping him, because he knew some of their records. Means inmate Kennedy, and another inmate by the name of Nurse. First thing Schlegel does going in is over to Nurse's bed and warns Nurse that he is aware that he may have something in his bed, and tells him not to make a move from the bed. Schlegel's reasoning is that this is necessary because he has to go by Nurse to get the other inmates. Nurse makes no move and he walks down to the furthest bed which is Sims.

Schlegel's recollection and testimony of what he said in this point in time is as follows: "Sims, get out of this bed, you are going to the box" he started to give me some sort of static, what for or something like this and I had a billy in my pocket and I reached in and pulled it out and says "Sims, I told you to get out of this bed, get moving", he said something anyway, his hand came through the blanket like that flying this way and I figgered I was going to get it in the face so I struck Sims across here". This blow was on Sims right arm, with the billy, as it arrived, Sims was getting out of bed. Schlegel says he

probably hit Sims a couple of times after that as he jumped out of bed and on his way out of the dormitory. States he struck Sims approximately three times, in areas on the upper arm soft spot. He was fairly close to Sims as he went out of the West Wing on a trot. Did not strike him on the way out, Sims being 5 or 6 feet away.

3. Hall: Events

The other three inmates were already outside, and Sims runs over towards them. Other Officers more or less adjacent. When Sims runs over to the other inmates, Schlegel, hits him across the back with the billy. Schlegel states that he said to Sims at this time "I told you to get to the cell block". Testimony is also to the effect that the blow was also delivered for these reasons "four of them were together and I didn't know if they would jump me there, it seemed like nobody was doing anything, the Officers were just standing to one side and it seemed like it was left to me again". From this interval on, Schlegel states that he did not hit Sims again.

The exact position of the aforementioned incident is identified in Schlegel's testimony as against the wall between the two windows shown in Exhibit 14. Schlegel's testimony is simply this, that at the blow "they all broke and ran into the cell block".

4. "Hole": Events

The inmates were brought down adjacent to the cell block, being ahead of the guards and having waited for the door to the cell block to open, by the control officer, they were directed to strip. This includes glasses and false teeth. The inmates removed their own clothing. The clothing was left there and not given back to the inmates. Schlegel had Spooner's glasses. One of the officers had the false teeth of one of the other inmates. Probably Winters. No blows at this time. Schlegel decides to put them all in one cell, because "if we had problems earlier on in the evening there were some of the cells in sue and we wouldn't have had enough and we wanted cells for these people, for these other people". Schlegel states that he was unaware that the mattress had been taken out of the cell, and that he had not ordered it. As the prisoners all went in, a reluctant one was jabbed by Schlegel with his hand. States he did not use the billy.

5. General:

Schlegel returns to the West Wing area, speaks to Dewar again and says no more officers around here, leave it the way it is let them go back to sleep.

Schlegel states that his reaction to Sims during the extraction, and the blows, then, were a product of his belief that Sims might have had a knife in his bed. Schlegel was aware of Sims reputation with others for violent behaviour, although not with himself. No specific problems between Sims and Schlegel previously. Schlegel admits to making no specific direction to Officer Coljee to get weapons from the guard room, and was unaware of the fact that Coljee did in fact do this. Other than Yutebyers,

Schlegel not specifically aware of what other officers outside of Cater had weapons during the extraction.

In his discussion with Dewar and Coljee prior to the extraction pertaining to the elimination of ring leaders, Schlegel states that Dewar told him about the story about Winters threat in these terms "apparently, Winters, had gotten up and went to one of the tables by the beds, and said "we are going to get that radio one way or another".

Schlegel states in his testimony that he went to Sims bed because of his opinion that if anybody was going to get hurt it would be him and he would not ask any other officer to go where he was afraid to go. Sims bed was the furthest bed in the ward away from the grill gate.

Schlegel's testimony with regard to the extraction of Sims from his bed, on cross examination, is found at Page 651 through to 654 in the transcript.

In summary, Schlegel's evidence is that he struck Sims approximately four times, about three times in the WestWing, and once whilst he was standing with the other prisoners and that he nudged him once at the isolation cell.

On cross examination Schlegel states that a further reason for quieting disturbances, is that they get out of hand, the gist of his testimony in this regard is that inmates who are not ring leaders but followers, are thus forced to go along with this sort of activity "because the ring leaders there they are afraid of them". That is, removing the ring leader is essential to controlling a situation because it removes the necessity for the frightened follower to participate in a disturbance.

Schlegel states that four years ago in a similar disturbance walls were broken down and some inmates beaten up. This is part of the rational for controlling disturbance of this nature by removing ring leaders.

Schlegel states that the reason he hit Sims in the hall was because the inmate did not on leaving the dormitory proceed straight down to the "box", he went over to where the other three inmates were standing around. Schlegel felt that he might have trouble controlling those four, and get "a good working over" before the other officers got over to help control the situation.

Schlegel did not stand Sims against the wall in those circumstances, he is unaware of any subsequent medical treatment that Sims might have had.

Schlegel was in Warden's Court the following morning when Sims was sentenced.

Schlegel's evidence is that he stated "I told you to go to the block", before he hit Sims in the hall.

Schlegel further states that the other guards were from five to six steps away from inmate Sims at the time he delivered the blow.

Schlegel's evidence is that he felt that Sims was defiant in his attitude because he did not get out of bed promptly when he was told to move.

Schlegel's further testimony is that where you have a tense atmosphere you have to move fast or you lose control.

Schlegel also states "there never would have been any force used if I didn't think he was going to hit me when he came out of that bed".

Schlegel also states that in circumstances where an inmate has been directed to do something, and cannot be persuaded to do it, that "you are more or less compelled to escort him to the isolation cells". Schlegel states that the three men who were inthe wing and exposed who he ordered removed prior to the extraction of the four prisoners, were exposed to be taken as hostages, and that he was surprised that this did not occur.

Schlegel on examination states that he considers Sims to be dangerous, not because of his size or build or strength, but based on his previous criminal record for crimes of violence, namely one charge of having a bayonet, one charge of having a knife, one charge of uttering a verbal threat, one charge of forcibly seizing a person, all of these not internal to the institution. There are other internal disciplinary offenses referred to in Schlegel's testimony, that is, using another inmates canteen card, fighting in the dining room.

Schlegel states that he struck Sims on the soft part of the arm and admitted that the billy was capable of breaking a person's arm.

Schlegel thinks that the large dormitory was built thus for reasons of economy. Experienced officers like Schlegel do not approve of these dormitories. Representations have been made with regard to dormitories, this situation is not appreciated in Edmonton. The only way you can control dormitories with 16 or 20 men, because ring leaders can force others to participate.

Finally certain types of inmates should not go into dormitories, an old alcoholic, yes, you can hold 20 of those in a dormitory and have no problems. You can even hold probably 20 of the older Indian fellows with no problem but nowadays we have so many young fellows going into the institutions, 80%, we have real problems because the younger fellows are harder to handle and harder to manage. Schlegel's testimony in response to questions with regard to the placing of persons with deviate sexual behaviour in dormitories is as follows:

Q. Now then, with respect to ----- you know what I mean by the term skinner.

A Yes

Q Would they be placed in a dormitory

A They could possibly be there if he is charged --

if his charge was that charge, no we would avoid it

but our situation is that a man could be a skinner and we may not know it at the time because he might be charged with another offence and could be in there.

Q But there is a telegram that the inmates know before you do, is that correct.

A Yes, they definitely know before we do.

Q Is he in physical danger.

A. Yes, he is.

Allan Merriam
(Page 670-690)

1. Disturbance Role:

Assistant Deputy Warden, working 4:00 to midnight shift, took the responsibility to escort and supervise the transfer of our inmates believed to be involved in the consumption of poisonous homebrew alcohol to the Foothills Hospital to have their stomachs pumped. The time of return from this job was approximately 10:45, at which time he proceeded down the West Wing of the institution, seeing Mr. Schlegel and officers going into the wing. He went to the West Wing because he was informed over the staff car radio at the hospital that there were West Wing problems. Cater informed him of this on the radio. He walked into the wing and stood beside the urinal observing Cater on the west side of the wing with a gas gun, as the other officers were getting the four inmates out of their beds. This is at the front of the west wing, a center position looking towards Mr. Cater. Observed none of the inmates being struck as they were taken out of their beds, because he says he was not close enough. Also states he was paying more attention to Mr. Cater. Mr. Cater was the Chief Guard on duty at that time, and also the person with the gas gun duty in the extraction.

The inmates walking out were following each other, the guards were behind them. The entire group passed him and went to the grill gate. Merriam remained in the wing for a few minutes and then followed the group out.

2. Hall: Events

States that he saw Schlegel give one push, I think he had the billy in his right hand and gave the inmate a push and told him to get moving. He then followed the group into segregation. States that the inmates were asking why they were going to segregation prior to the pushing he describes above. States he got no answers, Schlegel just told them to get moving. States that the inmates ran down the hall so fast that they were unable to keep up with them.

3. "Hole": Events

Merriam states that he was behind the group of

inmates and guards when the cell block gates were opened at the isolation cells. That is, he could not keep up with the group. He was at the bottom of the stairs adjacent to this area when the inmates stripped. He was issuing no commands. Mr. Schlegel was in charge. In effect his testimony is that because he was absent, Schlegel took over in his absence. He states "he started and I just went down to segregation with them when they were put in there". States that he could not see the inmates go into segregation from where he was standing on the steps. Merriam saw no further blows from the time of the push in the hall referred to above, to the time when all of the inmates were placed in the isolation cells. He did not see any of the inmates kicked. Merriam states that so far as he knows the clothes were ordinarily returned to the inmates after being stripped to check for weapons and contraband at that officer's discretion. He does not know if the clothes were returned to the inmates in this incident.

Merriam states that he was not aware that there was no mattress in the cell. He does not say whose responsibility it is to insure that the cell was set up at all times. He didn't know who had taken it out.

4. General:

Merriam states that he had nothing to do with the decision to issue weapons, and did not know who gave who weapons, being at the Foothills Hospital at the time in question.

Merriam states that is is standard procedure to search and to return clothing to prisoners after they have been searched. What was done on this occasion he does not know.

Charles Albert Boughten
(Pages 691 - 701)

1. Disturbance Role:

On midnight to 8:00 a.m. shift that day, back in at 10:30 the evening in question because telephoned by Mr. Cater.

2. Extraction Role:

Not involved because not present.

3. Hall: Events

On arrival at the jail at about 10:30, went directly back to the guard room in the west wing.

Went to the guard's cubicle and met with Schlegel Dewar and Coljee to discuss the situation. All institute personnel at that time were around the cubicle. The grill gates to the dormitory were closed. Cater was there at that time. When decision was taken at this time to do down and take the four ring leaders Dewar told them about out they proceeded to do so. This man was not advised as to what exactly he should do when he got into the wing. He can remember only three persons going in but states there could have been more. He went straight to Bed 39, where Winters was located. This is the bed behind the bed that Schlegel went to,

being Bed 40. He did not know who was behind him. When he got to the bed he hollered "lets move it" and when that inmate (Winters) did not move he grabbed him by the arm and pulled him out of bed. He did not observe what Schlegel was doing at this time being too occupied with Winters. He did not tell Winters where he was taking him. He had a billy club with him issued by Coljee before he left the guards cubicle, but the billy was in his pocket, on the right hand side. At the time he grabbed Winters, he was just coming around the end of his bed. Winters did not resist stumbled, and did not fall as he came out of bed. He shoved Winters towards the hallway, no resistance offered. It was the last he saw of Winters, as he then turned around to see what was going on behind him. All he observed in this point in time was Schlegel trying to get Sims out of bed. He states that he did see Sims arms waving around and Mr. Schlegel trying to tell him to move and he wasn't moving very fast so when his arms came by I grabbed them and helped him assist him out of bed. States that he saw Schlegel hit Sims body once on the right arm with his billy. The view from his position being between Sims bed and Winter's bed. States that Sims came out of the bed by going over the bottom or foot of the bed. In effect they both pulled him by his arms up over the end of the bed. Sims went over the end of the bed, but this officer does not think he fell. He thinks he was running when he hit the floor. He heard no statements from Sims to Schlegel during this interval that he can recollect.

Boughten stayed in the wing to assist Cater quieting the rest down by walking up to the front and meeting Cater. States that Cater said to the wing if anybody moves "he is going to let them have it", and also he states that Cater told anybody with clothes on to get them off or get into bed. Thinks things pretty well quietened down at this point. He and Cater stayed in the dormitory about 15 or 20 minutes. With one bank of lights on. There were no threats or yelling when they left the dorm. He deposited his billy at the guard room thereafter. He then prepared to take over work for the midnight shift.

4. "Hole": Events

No comment, not present there.

5. General:

(a) Boughten states that Winters had his hands under the covers when he approached his bed and that he was always afraid of what might be in the inmates hands in such circumstances, but nevertheless he left the billy club in his pocket.

(b) Boughten did not feel it necessary to take his billy club out of his pocket, even after hearing Sims shout during his exchange with Schlegel. That is, there was no further need to use force on Winters other than pulling him by the arm.

(c) It was the noise between Sims and Schlegel that caught his attention and caused him to turn around.

Vincent Oliver Upton
(Pages 706 - 709)

1. Disturbance Role:

Not applicable

2. Extraction Role:

Not applicable

3. Hall: Events

At 10:30 is at the guard room typing up the charges of another incident. Goes to South Wing to relieve Mr. Peterson for his coffee, and at approximately 10:45 saw group of officers led by Schlegel go into the West Wing. Two or three minutes later four inmates come out and go towards grill gate going towards the South Wing. By this time he is in the cubicle of the South Wing and sees into the hall that leads from the West Wing past the South East Wing. He sees the four inmates come out and stand there. Schlegel comes out a few seconds later, and he sees the four inmates milling around Mr. Schlegel and a bit of shoving going on. Cannot hear what is being said. He could see movement. The shoving going on was between the four inmates and Mr. Schlegel. They are in his point of view about two minutes, then another group of officers come out of the West Wing and at this point, all of the inmates start running towards the guardroom, towards the cell block. On cross examination this man says he is quessing when he says he saw shoving or it appeared to him that there was shoving. He did not say that they were shoving. His testimony is only positive with regard to "they were all milling around". This man's assumption is that Mr. Schlegel was alone for a moment, from the point of view that he made his observation.

Harold Roy Barron
(Pages 710-716)

1. Disturbance Role:

Not applicable.

2. Extraction Role:

Not applicable

3. Hall Events:

Not applicable

4. "Hole": Events

At 11:30 p.m. on his monitor T V camera sees four inmates standing outside the main cell block clad only in shorts. Opens the door and lets them in, Schlegel approaches from the upper corridor, inmates are led to punishment cells. As soon as the main doors open the inmates are put in Cell #1. This man proceeded downstairs with the inmates and guards, to open up the cells. They followed him, accompanied by Schlegel. Being ahead he doe s not know what other custodial personnel are with them. Opens main door, does inside to open up No. 1 Cell. This

is the only available cell the night in question.

Observes the inmates standing outside the punishment area. Observes them being stripped each of them goes into the cell, the cells are locked and all return to the upper level. States positively that no inmate was struck whatsoever, observes that Schlegel has billy club with him, states that the lead inmate was told to get into the cell or words to that effect, states that is all that happened in this area. States that he was pushed in with a billy. States that he was aware that there was no mattress in the cell in question. States that he took it out, this being standard procedure when I am putting four men in one cell, I strip the cell until I find out the situation and the stuff is returned. I cannot state whether or not the mattress is returned to the cell that night. The reason for this is that the shift changed. The clothes were not returned during his shift. They were stripped as standard procedure. There was no resistance from the inmates going into Cell No. 1. They were a bit slow moving.

This man states that he was not aware of other segregation cells available at this time, and does not know whether these men were just tossed into this one cell for punishment purposes. They were brought to this man and he states that the only place that he had and he used it. Dimensions of the cell are 6 to 7 feet long approximately, and approximately 4½ to 5 feet wide. Four men are tossed in there naked. Cells are exhibited on Exhibit 23. At this point in time 6 cells on the right of Exhibit 23 were being reserved for the alcoholic consumption incident. These were returning from the hospital and these cells were being held for them, this is why he was full up on the occasion in question.

Ronald Charles Coljee
Pages 540 - 576

1. Disturbance Role:

After telling Dewar to put the lights on he proceeds down into the wing, and notices the radio is off. Has the radio put back on. Can't hear it anyway because of all the noise being made. Walks down each side of the wing. Yelled to ask the inmates what the problem was, but not heard in the noise. During this time the inmates are yelling abuse at Dewar and Coljee. The purpose ofthe tour is to attempt to quiet the inmates. Returned to cubicle, both Dewar and Coljee, and then telephoned Cater to ask for more help. After call to Cater, Lynch and Peterson arrived. These are both employees of the institution. Cater states their stations, are Peters on one side of the wing, and Lynch on the other or eastern side, to observe what is going on and to determine where the trouble is coming from. The other officers arrive and Coljee is told to get the officers inside of the wing out. All of the officers come out and join others by the control cubicle outside the grill gate. The decision to extract those inmates identified as instigators is then taken. Inmates are Sims, Spooner, Watson and Winters. Cater and Schlegel et al participate in this decision within the control cubicle.

2. Extraction Role:

Personally, Coljee has no weapon. States that there are billy clubs in the possession of others, but that he arrived with a gas gun, was stationed on the west side of the wing. Coljee states that he brought weapons from the guardroom to the West Wing. States that the majority of the officers accepted a weapon from him. Schlegel instructed him to go and get the weapons. Officers who entered the wing are Schlegel, Yutebyers, self, Peterson and Lynch. Cater was on the west side with the gas gun. Coljee goes directly to inmate Winters bed, tells Winters he is being removed from the wing, and with this gets up and comes along thereafter. No force used other than grabbing him by the arm and saying "come on". States Winters not struck at all by self. Accompanies Winters up to the front and through the grill gate.

Recalls seeing Watson out of bed with handcuffs on, accompanied by Mr. Yutebyers, this recollection is prior to leading Winters up to the front of the wing and out. Observed no activity around Sims bed at that time. Outside grill gate had Watson and Winters up against the wall and said "that direction lets go and move it", or words to that effect, they complied and moved off down hall with Coljee behind them, running unable to keep up. Did not use any force on them during this run for that reason. Did not see Schlegel strike Sims of Watson in hall during this interval. As entered hall from west wing, saw a foot raised in a kicking motion, but did not see a kick land. Foot belonged to guard Addinall. States that during a part of the time that he was in the hallway, Inmates Sims and Spooner were out of his line of view, for about 3 to 4 minutes. This is because these two inmates were pressed up against a different wall than the other two.

3. "Hole" Events

Coljee testifies that he sees each of four inmates

nudged by Mr. Schlegel using the billy club as they are pushed into the isolation cell. A nudge means a poke with an instrument probably on the side, observes that Inmate Watson has handcuffs on at this time, thinks they were at the front. States that the four inmates were stripped naked at the isolation cells, but this is standard practice in order to insure that the inmates do not possess contraband dangerous or harmful items on their persons, also states that is is normal to return the clothing once it has been searched, but in this case, Coljee does not know if the clothing was given back because he left the area.

4. General

(a) Coljee states that he was aware of rumors that there were some knives in the wing prior to the extraction.

(b) Coljee states that during his tour of the wing, the inmates that he saw were suggesting the disturbance quiet down, had boots and cups thrown at them.

(c) Coljee states that the four inmates that he helped isolate were not, from his point of view picked out because of any previous reputation they had.

(d) Coljee admits that entering to extract the inmates without a defined extraction responsibility for each officer is not particularly good organization.

(e) Coljee describes the south wing as being divided into two 30 bed units supervised by a control booth in between. But he also states under questioning the institution is under staffed with regard to handling trouble breaking out simultaneously in the west wing, the south wing, and the cell block. He also stated that under cross examination that the south wing control block has its view of one part of the south wing partially obstructed because it is not glassed in all the way around.

ALLAN LYNCH
(Pages 577 - 599)

1. Disturbance Role:

Employed in the east wing on the night in question, officer in charge there, at 10:30 goes for coffee break, hears commotion in West Wing, has coffee, and returns past the guardroom at 10:45 at which point Cater is waiting for him. Cater states to he and Peterson at the time "the two of you, we have got a commotion in the west wing, Peters here is a flashlight and here is a billy put them in your pocket and both of you report to the West Wing. I will be there in a few minutes".

Cater instructs him to stay out in the hall and stay out of sight and out of the way and wait until we discover how the thing is going to develop. Stays there for a couple of minutes. Then Coljee comes out and tells him to proceed to the far end of the west wing and stay down there. The prisoners are making remarks to the effect "that I had more guts than Coljee had for going down in there". Hears threat "anybody that comes in here is going to get killed" at this time. Does not identify source. Positions self on east side

of West Wing at the bottom end opposite from the grill gate end. Had billy in pocket, having overheard Schlegal's instructions to everyone in this regard. Heard A.D.W. Schlegel say this to Mr. Cater. States that once he was down in there behaviour wasn't too bad, outside of "yakking, whispering and comments of this nature". Stayed in this position for approximately 5 to 10 minutes. At this point Coljee withdraws him from the wing and brings him back in behind the grill and to close up the grill gate. Wait for more officers to be called in from other shifts. When this guard leaves the wing everyone is withdrawn. Noise trouble still carrying on. After withdrawal wait 15 minutes up to half an hour for rest of the personnel to arrive.

2. Extraction Role:

Guards are group assembled outside of grill gate, Schlegel directing the operation, hears decision about extracting being made in the guardroom cubicle. They, being the officers directing the extraction generally, are quoted as saying by this Officer ."we better watch ourselves and make sure if we get problems and if they are going to turn on us we better get the heck out of there quick, we'll all go in and we are going in and we are going to stay in and see if we can get those four out of there". Lynch has not told directly who the four being extracted are going to be. Direction from Lynch to Cater is to watch and make sure that nobody makes any moves from behind the group going in. Lynch's job was to watch inmates on the extreme east side of the dormitory while the extraction was being done. Concentration was watching to make sure that everyone stayed in bed in this area. Saw or heard nothing with regard to blows or whacks. States Mr. Schlegel and Mr. Boughten, were hauling bodies out of bed. Doesn't know which inmate or inmates this was. States he did not see Schlegel strike anybody.

During extracting and walking inmates up to grill gate, and thereafter, Lynch stays in the wing at the washroom end, on the far side from Cater until Cater leaves then comes out himself. While going out to grill gate states that he was backing out watching inmates. States he never left West Wing area until approximately 11:45. States that noise subsided greatly after the four inmates were removed. On cross examination regarding mode of removal from beds, Lynch describes removal and exit from wing under conduct of other Officers in these words "well, they went over to the bed and said okay they were getting them up out of bed to individuals in bed, they were telling them to get up out of bed and prodding them along and getting them out of there". States that inmates were not pulled out of bed, generally they were getting out of bed once they were told to get out of bed. Prodding he states means grabbing by the arm or nudging inmates with the hand. Identified Schlegel and Boughten as acting in this manner in particular. Inmates went out of the wing on the trot. And guards too. Saw no kicking. If inmates had any clothing at all on, it would be only their shorts.

3. Hall: Events

No significant testimony here as Lynch was not participating in that part of the incident.

4. "Hole": Events

Not applicable, no comment here, not present.

5. General:

Lynch states generally, that Schlegel was effectively in operative control of the extraction operation.

Aside from himself, Lynch states that Schlegel, Peterson and Yutebyers specifically had billy clubs, although other Officers may have had them that he could not identify. Lynch testified that he did not really appreciate being asked to take the position that he did by Coljee, at the extreme end of the wing away from the grill gate "especially when I didn't know what was going on or getting in there". Further, I thought here we were..... the wing holds 96, probably had anywheres from the neighborhood of 85, 90 inmates in bed and here we are only 3 or 4 of us. None of us outside our green shirts to protect us. I didn't think very much of it. Further I will put it this way I had a lot of respect for it. I was very concerned at that time, I was very concerned because it was a little out of the ordinary as to what they were going to do that night". Lynch further states that usually sending Officers into the wing in the manner he was sent in where there is some disturbance or unruly behaviour for half an hour or so, and having them walk and move around, is enough to break up a disturbance or game and the inmates go to sleep. The evening in question he states "no way they were going to shut up".

THOMAS WILLIAM ADDINALL
Pages (600 - 611)

1. Disturbance Role:

Went in early on phone request from Cater. Got called at 20 minutes to 11 at the institute about 5 minutes to 11 went to guardroom, and through security gates and towards West Wing.

2. Extraction Role:

Not applicable

3. Hall: Events

Sees four inmates being moved around the corner of the west wing and down the hallway towards the guardroom. States they were being hustled forward and moved towards the maximum security area. Guards are behind them. See Schlegel as Senior Officer in area and group of guards behind him. States that all of the inmates had under pants on. Sees no weapons at this point in time. Saw no striking, states that hustling means hand movements,behind the prisoners, asks Schlegel if he has sufficient men to deal with the situation, reply is yes.

4. Isolation Cells: Events

No comment, not present.

5. General:

(a) States that wing has quieted down by the time he arrives there.

(b) States that he does not know that the inmates in the West Wing were or were not aware of the Foothills Hospital disturbance.

(c) States the he does not know whether the violence at the Foothills Hospital could have been part of a conspiracy related to the violence or disturbance in the West Wing.

(d) Guards and prisoners are a composite group on the move when they come into sight of this Officer.

SECTION 3.1 FINDINGS AND CONCLUSIONS: THE INCIDENT CONCERNING INMATES HARWIG AND ROCHELEAU

SECTION 3.1.1 Findings of Fact: The Incident Concerning Inmates Harwig and Rocheleau

1. On June 23, 1973, Inmate Rocheleau was placed in the Segregation Cells, in Cell Block C, within Cell No. 3, by Officer George and Officer Umpherville, as a result of having been put on charge by Officer Sharp for using obscene language and threatening an officer. These charges had been preferred on this day, in circumstances whereby Officer Sharp had asked Inmate Rocheleau to proceed to his cell on the "A" Range with dispatch, whereupon after having entered his cell, Inmate Rocheleau made a threatening gesture and spoke to Officer Sharp in an obscene manner through the closed door of the cell. The details of this incident are included in the resume of the testimony of Officer Sharp and Inmate Rocheleau, attached herein.

2. Inmate Harwig was placed in Cell No. 4, Segregation Cells, on June 23, 1973, on a charge of refusing to work.

3. On June 24, 1973, at about 2:00 p.m., on the day following, all or most of the inmates in the Segregation area began to make noise by banging or kicking the doors of their cells. It is not established which inmate began this disturbance or whether all inmates began this activity at approximately the same time. Inmate Sims states this disturbance went on for about one-half hour, and was roughly coincidental with Harwig's exit to receive a visitor upstairs. Inmate Harwig states that the disturbance was going on when he came back from his visit upstairs, that this activity occurred only when guards were absent from the area, that he participated briefly at that time by kicking his door two or three times, but that he desisted thereafter because he had contraband tobacco in his possession and did not wish to attract attention to himself.

4. The Commission finds, as fully referred to below, that Inmate Rocheleau participated in the door-banging and kicking activity within his own cell. The Commission states that there is important uncontradicted evidence from Inmate Rocheleau with regard to his addiction to heroin and possession of heroin for his own use in the Calgary Correctional Institute, which bears on the veracity of his evidence with regard to withdrawal symptoms as a cause of his disturbance activity as referred to below, and on other aspects of jail procedure and policy.

5. The essence of this evidence with regard to heroin addiction and use within the Calgary Correctional Institute is as follows:

Inmate Rocheleau states that his heroin habit is four caps a day. He states that he couldn't get heroin in the Segregation Cells, and that he was able to get heroin in the cells that he was originally removed from. He states that he had or has fifty to sixty caps in his possession or effective control. The caps were kept with another inmate. He states that the caps came into the Institution within his property, which was in the possession of the R. C. M. P. when he arrived from Regina. He states that the sixty caps were inside his wallet. He states that he is not suggesting that the R. C. M. P. knew this material was in his wallet, but simply that his wallet and none of his possessions were searched, that he knows of.

6. Whilst at the Institution, this inmate states that he was using two caps a day in order to prolong his supply. The drug was taken by a syringe. The syringe was kept with another inmate. Rocheleau would take his fix in his cell. The syringe is brought in to him. A cleaner brings it to him. Using two caps a day, Inmate Rocheleau states: "I was bitchy. Two caps a day would keep me." The inmate started his habit in November, on about half a cap a day, and now had worked up to four caps a day. The inmate was also getting heroin at the Regina Institution.

7. Inmate Rocheleau states that, to his knowledge, none of the guards at the Institution knew about his heroin habit, if they knew anything about the presence of the substance, they did not do anything about it. Upon being asked whether or not he has known any guards or prison staff at the Calgary Institution to "either approve or wink their eyes at or encourage . . . drugs or anything of that nature", this inmate states ultimately, as a result of questioning on the point by the Commission, that he knew of no guards with whom one could make a deal.

8. Specifically, with regard to the role of withdrawal symptoms as part of the disruption created by Inmate Rocheleau in his cell, Inmate Rocheleau made the following statement: "My nerves and everything just started going out, I just started spinning off. Just like as if the room kept on getting smaller and smaller." Inmate Rocheleau also agreed at this juncture that heroin affected all of his senses. Conversely, with reference to events after his removal from the Segregation

Cells, Inmate Rocheleau stated that his sensory capacity was not impaired. Further therein, Inmate Rocheleau stated that after being put in Segregation, this was the first time that he had to "dry out" in this manner. He stated that he had never been in any closed-in cells before, only the cells with bars, in circumstances where he was undergoing withdrawal symptoms.

9. The Commission finds that Inmate Rocheleau kicked or banged the door of his cell during the interval discussed during all of the foregoing and that the cause of this activity was related to the effects of withdrawal symptoms. The Commission finds that Inmate Rocheleau was suffering from withdrawal symptoms, because he was unable to obtain heroin in the Segregation Cells.

10. The Commission finds that the most traumatic or disturbing effects of the withdrawal symptoms experienced by this inmate, to the extent that these symptoms governed his behaviour, occurred as a result of the incarceration of Inmate Rocheleau in a Segregation Cell of a closed nature. The Commission further finds that since the other inmates in the area participated in this disturbance and there is no evidence that these inmates were affected by withdrawal symptoms, the cause of inmate behaviour of this nature cannot be wholly and entirely related to the effects of drug withdrawal symptoms.

11. The Commission finds that approximately 2:00 p.m. on June 24th, 1973, a decision to remove the inmates in Cells No. 3 and 4 in the Segregation area in the Cell Block to the cells underneath the Guard Room was taken by Officers George and Anderson, in consultation with A. D. W. Schlegel, based on a desire to prevent the continuance of the disturbing effects emitting from the Segregation Cells on the rest of the Cell Block.

12. The Commission finds that Officers Anderson, Sharp, Rice, George and A. D. W. Schlegel went down to the Segregation area at this juncture to effect this purpose.

13. With regard to the manner in which Inmates Rocheleau and Harwig were removed from Segregation Cells No. 3 and 4, the Commission states that, in general, there is a complete conflict between the testimony of the inmates and custodial staff concerned. Custodial staff testified to the effect that the doors of the cells were opened, that no custodial officer entered wither cell, and that each of the inmates came out of their cells willingly. Conversely, Inmates Harwig and Rocheleau locate Officer George and A. D. W. Schlegel in both their cells and attest to being jumped on in bed, to arm-twisting, neck-squeezing,

to being pulled off the bed by the hair, and shoved or pulled and kicked in the ankles thereafter as they exited from their cells and moved out of the Cell Block towards the cells underneath the Guard Room. The Commission accepts the evidence of the Custodial Staff with reference to these events.

14. The Commission finds that there was an altercation in the hall outside of the Cell Block near the barber shop whilst Inmates Rocheleau and Harwig were being escorted to the cells under the Guard Room, involving Inmate Rocheleau and the officers who were escorting him in that direction, A. D. W. Schlegel, and Officers Anderson, Rice and George. The Commission finds that Inmate Harwig was not involved in this altercation, was physically separate from it, ahead of this group and down the hall, being escorted at that position by Officer Sharp, and that Inmate Harwig was successfully calmed by that officer and moved to the cells under the Guard Room as well without any further difficulty.

15. The Commission finds that the altercation referred to in the foregoing began when Inmate Rocheleau stopped in the hall, was asked to move forward, refused to move at all or more quickly, and immediately thereafter lost control of his temper, turned and punched Officer George in the face, cutting the inside and outside of his mouth, and knocking him to the ground.

16. The Commission finds that Inmate Rocheleau was then brought under control thereafter by A. D. W. Schlegel, Officer Anderson, Officer Rice and Officer George in the hall by the barber shop, and moved off his feet by wrestling him to the ground and pinning him then on his stomach whilst handcuffs were placed on his hands behind his back by Officer Anderson. The Commission finds that Inmate Rocheleau was not struck with fists or other instruments whilst he was being thus subdued. The Commission finds that the use of handcuffs to bring and keep Inmate Rocheleau under control was justified, due to the intensity of the struggle of Inmate Rocheleau and that Officer Anderson requested during the struggle that handcuffs be brought to him from the Guard Room area.

17. The Commission finds that the right wrist of Inmate Rocheleau was cut and bruised by the edges of a tightened handcuff. The Commission finds that this tightening effect occurred as a result, primarily, of the pressure-actuated ratchet design of the handcuffs used, but states that there

is conflict in the testimony submitted as to the source of this pressure.

18. Inmate Rocheleau states that Officer George applied pressure to the handcuff on his right wrist deliberately and thus caused the injury by this means. Officer Anderson states that he held on to Inmate Rocheleau by the handcuffs, and A. D. W. Schlegel and Officer George held Inmate Rocheleau by the arms, as the three officers removed the still struggling Rocheleau to the cells below the Guard Room after the altercation referred to in the foregoing. The Commission accepts the evidence of Officer Anderson and finds that the injury to the right wrist of Inmate Rocheleau occurred because of the ratchet design of the handcuff used, and because of the effect of the struggle, which still continued as Inmate Rocheleau was taken down to the cells under the Guard Room.

19. The Commission finds that Inmate Rocheleau was placed in a cell in the area underneath the Guard Room, subsequent to the aforementioned events, and that the handcuffs were removed from his hands at that time. The Commission further finds that Inmate Rocheleau did not request that any medical attention be given to the abrasions which the handcuff had made on his right wrist.

20. The Commission finds that A. D. W. Schlegel and Officer George entered the cell in the cell area below the Guard Room where inmate Kemp was confined, after having placed Inmate Rocheleau in an adjacent cell in this area on the day in question. The Commission states that there is a conflict in the testimony of the inmates concerned and the custodial staff concerned, with regard to the cause of this entry, the purpose of the officers in entering this cell, and their conduct within this cell.

21. With regard to the foregoing cell entry, the testimony of A. D. W. Schlegel is to the effect that Inmate Kemp had made a derogatory remark directed toward him, that Inmate Kemp was acting as if contraband were under his pillow, that the pillow was lifted with Inmate Kemp in the bed undisturbed, that he had no gas-dispensing device on his person, and that Inmate Kemp was not struck and that gas was not used on this occasion. A. D. W. Schlegel also made statements to the effect that if Inmate Kemp said Schlegel slapped him and sprayed his eyes with mace, then in both cases Inmate Kemp was lying.

22. Conversely, Inmate Kemp states that he was told to be quiet by A. D. W. Schlegel when the other two inmates were brought in to this area, and that he told A. D. W. Schlegel to "go fuck himself" at that juncture; that A. D. W. Schlegel "flipped out" right there, had his cell opened, that he (Kemp) was then thrown on his bed and that mace was sprayed in his eyes and that he was slapped at random. There are inconsistencies in this testimony as to whether there was a mace can seen in A. D. W. Schlegel's hand or nothing, and with regard to whether or not a can of mace seen was in A. D. W. Merriam's hand or in A. D. W. Schlegel's hand. The Commission accepts the evidence of A. D. W. Schlegel with regard to this aspect of the incident. It is to be noted that the cells in these areas have open-bar construction at the front, and that Inmate Graham, in an adjacent cell, did not smell gas in circumstances wherein if it had been used, the gas would have been free to circulate through the bars of nearby cells, and its odour would therefore have been apparent.

23. Based primarily on the testimony of A. D. W. Schlegel, the Commission finds that it is indicated that it is generally the responsibility of an inmate suffering from drug use symptoms, or withdrawal symptoms, to make such facts about his condition available to the custodial staff. Although members of the custodial staff may discern such circumstances themselves, formally it is not their responsibility to do so. If such symptoms are discerned, it is probable that an inmate demonstrating such symptoms, if he is to undergo punishment or removal for this or other reasons, will be placed in the Observation Cells, not in the Segregation Cells. Officer George also testified to the effect that on other occasions he had been advised of the fact that inmates might be withdrawing from the use of drugs or experiencing medical problems, and that he was not so advised on this occasion. The position which A. D. W. Schlegel took in this regard is that no one told him Inmate Rocheleau was undergoing withdrawal symptoms and that this fact only became manifest some weeks later.

SECTION 3.1.2 Conclusions: The Incident Concerning Inmates Harwig and Rocheleau

1. The Commission concludes that within the structure of this incident, there were three phases wherein force was utilized, or might have been utilized, and might have been considered to have been used in excess in those circumstances. The conclusions of the Commission with regard to each of these circumstances are as follows:

(a) The first phase pertains to the removal of Inmates Harwig and Rocheleau from the Segregation Cells prior to their transfer to the cells below the Guard Room. The Commission accepts the evidence of the custodial staff with reference to this aspect of the incident and therefore concludes that Inmates Harwig and Rocheleau came from their cells voluntarily without the use of force, and that therefore there could not have been any excessive use of force during this aspect of the incident.

(b) The second phase pertains to the altercation in the hallway, which occurred whilst Inmate Rocheleau was being escorted to the cells under the Guard Room. The evidence with regard to this aspect of the incident is essentially consistent. The Commission finds that the force used therein to bring Inmate Rocheleau under control, and to transport him to the cells under the Guard Room, was reasonable and necessary in all the circumstances.

(c) The third phase pertains to the aspect of this incident wherein custodial officers, principally A. D. W. Schlegel and Officer George, entered the cell of Inmate Kemp in the cell area underneath the Guard Room. As has been repeatedly the case during the course of this Inquiry, there is complete conflict between the testimony of the inmates concerned with this incident, and the testimony of the custodial officers concerned. As indicated in the findings of fact which precede the conclusions with respect to this incident, the Commission accepts the testimony of the custodial officers with respect to what transpired in the cell of Inmate Kemp and therefore concludes that nothing more than a routine search for contraband material occurred in that cell at that time, and concludes therefore that no force was utilized in this cell at that point in time at all.

SECTION 3.2 SUMMARY OF EVIDENCE: THE INCIDENT CONCERNING INMATES HARWIG AND ROCHELEAU

SECTION 3.2.1 Location of Witnesses, Background, Roles: The Incident Concerning Inmates Harwig and Rocheleau

Custodial Staff

Norman D. George

Correctional Officer 2, employed at the Institute eight years, located in the "B" Range at the time this incident commenced. Received a report of the incident from Mr. Sharp.

Patrick Sharp

Correctional Officer 1, employed at the Institute about eight months, located on the "B" Range at the time of the incident. Reported the behaviour of Inmate Rocheleau as he placed him in his cell, to Officer George.

Allan Rice

Correctional Officer 1, employed at the Institute six months. Second officer in the Cell Block crew on the "A" Range on the day in question. Became involved in the incident when he went to the Segregation Cells with Schlegel and Anderson to remove noisy inmates from that area.

John Schlegel

The background of this officer is fully referred to in the record of the previous incident. He became involved in this incident when he was telephoned with regard to the behaviour of the noisy inmates at the Guard Room, by Officer George.

Carrol Edwin Anderson

Correctional Officer 3, transmitted the message from George regarding the disturbance in the Segregation Cells to Mr. Schlegel, who was the senior officer on duty.

Walter James Cater

Biographic information on this officer is referred to in the information appendix to the West Wing incident. Involvement in this incident is limited to the tour of inspection of the cells under the Guard Room area.

Inmates

Frederick Alexander Rocheleau

Presently an inmate of the Institution, serving a one-year sentence for assault causing bodily harm. At the time of the incident he was a resident of the Institute while on remand for a court appearance. His involvement in this incident began when originally placed on charge June 23rd by Officer Sharp.

John Bernard Harwig

Presently an inmate of the Institution, serving the sentence of one year for breaking and entering. He became involved in the incident through having been placed in the Segregation Cells on the night of June 23rd for refusing to work.

Robert Earl Sims

The sentence and record of this inmate is referred to in previous biographic information in the first incident. He became involved in this incident because on the night of June 22nd he had been put on charge and placed in segregation for refusing to work.

William Austin Kemp

At the time of the incident, was in the Segregation Cells, being on charge for creating a disturbance. These are the bar cells underneath the Guard Room.

Wallace Johnston Graham

Became involved in the incident because he was housed in the Segregation Cells underneath the Guard Room on the night of June 24th, 1973. He had been taken down there the same time as Mr. Kemp. In the cells for causing a disturbance in the East Wing.

SECTION 3.2.2 Testimony of Custodial Staff:
The Harwig-Rocheleau Incident.

Norman D. George (739 - 780)

1. June 23, 1973: Events

As Duty Officer for the cell block wing, acting on the report fromOfficer Sharp to the effect that he had been threatened by Inmate Rocheleau, states that he and Officer Umpherville moved Inmate Rocheleau from his cell in the wing and placed him down in the meditation cells. This officer states that Inmate Rocheleau was angry at the time but that he was placed in meditation cells without any resistance. Inmate Rocheleau was placed in Cell No. 3, shown in Exhibit 23, on the left of that photograph. As per standard procedure, all of Inmate Rocheleau's clothes were stripped off him when he was placed in this cell, and then returned to him when he was back in the cell.

2. June 24, 1973: The Disturbance: Removal From Segregation

States that at about 2:00 p.m. on June 24, 1973, pounding noises are coming from Segregation Cells 3 and 4. Inmate Rocheleau was in Segregation Cell No. 3, and Inmate Harwig is in Segregation Cell No. 4. The two cells are next to each other. The pounding goes on for approximately an hour and a half. States that he then telephones Officer Anderson in the Guard Room to ask him if he can move the two inmates in these two cells to the "M" cells under the Guard Room, because the noise that they are making is disturbing the whole cell block. Prior to his call, states that he had gone down from the control cubicle to the Segregation Cells to see who was making the noise.

States that in ten minutes, Officers Anderson and Schlegel arrived, and that immediately thereafter Officers Anderson, Schlegel, Sharp, Rice and himself went down to the Segregation Cells and opened the doors leading into the cells of Inmate Rocheleau and Inmate Harwig.

States that he opened the door to Inmate Harwig's cell, that Inmate Harwig was pretending to sleep, and on being asked to come out that Inmate Harwig did so voluntarily and proceeded down to the B Level with Officer Sharp. This officer states that he did not touch Inmate Harwig during this interval.

This officer states that Inmate Rocheleau, when the door to his cell was opened, was lying or sitting on his bed. He states that he did not go into Inmate Rocheleau's cell, and that Officer Schlegel did not enter Inmate Rocheleau's cell. He states that when the door was opened, and Inmate Rocheleau came out that he came out in a reluctant (a slow) manner, of his own volition. This officer states that the other officers were standing around at this interval and that A. D. W. Schlegel was standing behind him.

3. June 24, 1973: The Fight in the Hall.

After leaving the cell block in the company of this officer and other guards, and proceeding about 30 paces towards the Guard Room, Inmate Rocheleau refused to go any further. He was told to go forward. When he refused to move, he was being pushed on the shoulders to move him forward. He was not struck at this time. At a point in front of the barber shop, Inmate Rocheleau turned around and started fighting with all of the guards. At the start of the fight he struck this officer in the face and knocked him down to the ground, "cutting the inside and outside" of the officer's face. This officer states that Inmate Rocheleau had not been struck by the guards before this incident occurred. This officer identifies A. D. W. Schlegel, Officer Anderson, Officer Rice and himself as those being present, who at this point subdued Inmate Rocheleau by wrestling him and pinning him to the floor, grabbing his arms and legs further to that purpose. When Inmate Rocheleau was wrestled to the floor in this manner, he was not struck, but rather his arms were pulled behind his back and he was handcuffed. During this interval, Inmate Harwig was ahead of those officers and Inmate Rocheleau, in the company of Officer Sharp, and not involved in this fracas. This officer states that he was not the person who placed the handcuffs on Inmate Rocheleau, or subsequently took them off at the "M" Cells. The duration of this incident was about thirty seconds to one minute.

4. June 24, 1973: Events in the "M" Cells

This officer was present at the "M" Cells when Inmate Rocheleau was brought down to them subsequent to the fracas described above. This officer did not take the handcuffs off Inmate Rocheleau's hands at the "M" Cells. He does not recall who took them off. He does state that when someone is placed in the "M" Cells beneath the Guard Room that the standard procedure is to remove any handcuffs which may be on their hands. He does not recall Inmate Rocheleau bleeding from the wrists or having any marks on his wrists from the handcuffs which had been placed on his hands.

5. General:

This officer stated under cross-examination that removal to the "M" Cells from the Segregation Cells is useful because it limits the effect of an inmate who is creating a noise disturbance upon all the other inmates in the cell block. The evidence of this officer as to whether or not conditions within the "M" Cells are actually more unpleasant than conditions within the Segregation Cells is inconclusive.

Under further cross examination with regard to conditions in the Segregation Cells in the cell block, this officer testified that the cell in which Inmate Rocheleau was incarcerated had a solid block door, one day light, one night light, a bed, a toilet and a wash basin and a six-inch by six-inch observation window within the cell block door. This officer also indicated that he had no knowledge that Inmate Rocheleau had been or was a heroin addict, and that he had no advice with regard to the possibility that this man might be undergoing withdrawal symptoms. This officer confirmed that in the Segregation or Meditation Cells concerned with this incident, all you can see from within the cell is just through a little hole in a doorway across what used to be the dark cells. States that no tobacco is supplied in these cells, and that no reading material other than Bible is provided. The evidence of this officer is inconclusive as to whether or not incarceration in the Segregation Cells amounts to punishment. Being placed in the Segregation or Meditation Cells is the ordinary consequence of being put on charge by an officer within the cell block.

On other occasions this officer has been advised to the fact that inmates might be withdrawing from the use of drugs or experiencing medical problems. He was not, on this occasion. This officer was not aware how long Inmate Rocheleau had been in custody.

No weapons were at hand or used at the time Rocheleau and Harwig were removed from the Segregation or Meditation Cells. This officer did not see or use any type of tear gas or mace at this time.

Patrick Sharp

1. June 23, 1973: Events

On day shift June 23rd, on duty within B Range, Mr. George in charge, but away for coffee or something else. Noticed on television monitor that an inmate is wandering on "A" Range where he shouldn't have been. No one else comes into the monitoring room, and this officer goes up to "A" Range and

asks the inmate (Rocheleau) to go back to his cell. States that Rocheleau had a "dour look", that he was "very sullen and I asked him three times to go to his cell". As Rocheleau got to his cell, he turned to this officer and stated "fuck off" and raised his fists. This officer slammed the cell door, with Inmate Rocheleau within the cell, locked the door and went down and reported the incident to Mr. George. This officer was asked if he wished to make a charge and he stated he did. Rocheleau was charged, and Mr. George and Mr. Umpherville subsequently took Rocheleau down to the "dark" cells, that is, the Meditation Cells underneath the cell block. The charge preferred against Rocheleau by this officer was using obscene language and threatening an officer. This officer was not involved in the transfer of Rocheleau from the "A" Range to the Segregation Cells on June 23rd, subsequent to the above events.

2. June 24, 1973: Disturbance: The Removal from Segregation

This officer states that on this day there was "a ruckus down in the dark cells". This officer, A. D. W. Schlegel, Mr. George and Mr. Anderson went downstairs to the cells, and as Mr. George opened the cell door this officer squeezed by Mr. George and A. D. W. Schlegel because Officer Umpherville was trying to attract his attention at the small door window in the door between the dark cells and the "C" Range to suggest that the other inmate who was causing a disturbance was in Cell No. 5. The disturbance was a dull thudding that had been going on for about an hour and a half, vibrating and echoing all through the cell block. This officer does not know which cell door Mr. George was opening at this interval. He did hear the inmate in that cell being told to come out by Mr. George. By the time he turned around the inmage was out of the cell, whose door Mr. George had opened, and was walking up the hallway towards the exit. This officer was told to follow him, shortly thereafter Mr. George came out after this officer and this inmate, and Mr. George, this officer, and the inmate, now identified by this officer as Inmate Harwig , went out the cell block gate. This officer did not observe Inmate Harwig to be in any pain or agony, or to have run from his cell. This officer and Inmate Harwig proceeded forward down the hall, whereupon Harwig stopped and started to shout objections to this officer with regard to the effect that the guards appeared to be ganging up on the other inamte behind them, Inmate Rocheleau.

This officer was unaware of the group behind him, but turned around and states that he saw Inmate Rocheleau strike Officer George in the face. From that point on this

officer was busy with Inmate Harwig, preventing him from joining in the melee and keeping him calm. From this point forward this officer took Inmate Harwig downstairs and locked him in the cells underneath the Guard Room.

3. June 24, 1973: The Fight in the Hall.

Other than the first blow delivered to Officer George by Inmate Rocheleau, this officer was occupied with controlling Inmate Harwig and supplies no other detail testimony as to the altercation behind him.

4. June 24, 1973: Events in the "M" Cells

As stated above, this officer was able to persuade Inmate Harwig to come to the "M" Cells. This officer got Inmate Harwig down into the cells without incident. He was not there when Inmate Rocheleau was brought down subsequently.

5. General

This officer accedes to the statement in cross-examination that Inmate Harwig had drawn his attention to the fact that "the guards are beating up on Rocheleau", in the language of Inmate Harwig, and that he did see the punch thrown by Inmate Rocheleau.

This officer is unable to assert positively or negatively whether any of the Correctional Officers went into Inmate Harwig's cell, or Inmate Rocheleau's cell, at the time the two inmates were removed from the Segregation Cell area. He does state that Inmate Harwig was the first inmate released from the cells.

This officer did not hear any sounds or signs of a struggle going on behind him when he was preoccupied with Officer Umpherville getting the signals through the door at the beginning of the extraction from the Segregation Cell area. He recalls hearing nothing but Officer George telling an inmate to come out of the cells.

Allan Rice

1. June 23, 1973: Events

Not involved.

2. June 24, 1973: The Disturbance: The Removal from Segregation

At 3:40, this officer accompanies A. D. W. Schlegel and Mr. Anderson, Mr. George and Mr. Sharp down to the Segregation Cells. Says that someone he didn't know opened Inmate Harwig's cell, he was the back of the group and didn't see who did. Heard someone tell Inmate Harwig to come out of his cell, does not know who that was. States that there did not seem to be any delay in getting Inmate Harwig out of his cell, that he was on his feet and walking. States that he did not see anyone go into Inmate Harwig's cell. States that Rocheleau's cell door was then opened and that he came out, not as quickly as Harwig, but that he came out. He states that he thinks he saw a green shirt going into Inmate Rocheleau's cell, but does not know which officer it was. States that the two inmates were taken upstairs at this time, by himself, Officer Sharp, Officer George, Officer Anderson and A. D. W. Schlegel. He was behind the whole group coming out. After the group exited out of the cell block door, this officer went back to work in the cell block. Saw no blows struck during this whole extraction interval, either by guards or inmates. Heard no scuffle whilst both inmates were extracted from the cells. Heard Harwig say "what is the matter", or something like that, hears no more noise in the cell block after these inmates were removed.

3. June 24, 1973: The Fight in the Hall

This officer did not leave the cell block and did not witness this aspect of the incident. He did see Officer Georg- come back to the cell block later with a cut on his face.

4. June 24, 1973: Events in the "M" Cells

This officer was not present in this area at this time.

5. General

This officer under cross-examination said that there was no pushing or shoving as Harwig and Rocheleau were brought up out of their cells and brought to the main hall.

This officer also indicated under cross-examination that inmate Rocheleau had made a statement to him prior to the Inquiry to the effect that he might as well bring the incident in question to the attention of the Inquiry because he had nothing to lose, given the way he was being treated in the Institution.

John Schlegel

1. June 23, 1973: Events

Not involved this day.

2. June 24, 1973: The Disturbance: The Removal from Segregation

Responds to a call from the officer in charge of the shift to the cell block to this effect: 'Come to the cell block, two of the inmates were banging the doors, creating quite a racket throughout the whole cell block and that they would have to be removed'. As a result of this call, went down to the cell block with Officer Anderson from the Guard Room, Officer George, Officer Sharp and Officer Rice. Officer George had a key and opened up Cell No. 5; Inmate Harwig was in there. Officer George states: "Okay, Harwig, come out of there. You are moving to the front", or words to that effect. Harwig then comes out. The group proceeds to Cell No. 4. Officer George opened the door, states: "Rocheleau, come out. You are going up to the front", or words to that effect. At this point Harwig had come out of his cell, and gone along with Officer Sharp, so Inmate Harwig and Officer Sharp are away from the group when the door to Rocheleau's cell opened. States that Rocheleau came right out of his cell, that this group then went through the cell block gate, the inmates stopped and put their slippers on and then all proceeded upstairs into the Segregation area.

States that neither Officer George nor himself entered either Inmate Rocheleau's or Harwig's cells. States that no force was used to get either inmate out of their cells. States that no officer pushed, struck, kicked or shoved either inmate as they were taken out of the Segregation Cells. States that both inmates proceeded on their own volition.

When out of the cell block, proceeded down the hall to the cell area underneath the Guard Room. States that Inmat- Harwig and Mr. Sharp were walking normally, ahead of the balance of the group accompanying Inmate Rocheleau. States that Rocheleau "was a little bit refusing to move sort of a thing", "he was poking along". Rocheleau stops, this officer says: "Come along, Rocheleau, let's get going", holding Rocheleau by the shoulders. At this juncture Rocheleau whipped around, struck Mr. George, and knocked him down. This officer did not see the blow. He saw the inmate's arm come around and the next thing he knew, Officer George was knocked down. He then states that all of the group jumped on Rocheleau, more or less wrestling him to the ground. This group would be Officer George, this officer, and Officer Anderson.

When Rocheleau was wrestled to the ground, a pair of handcuffs were obtained, and Rocheleau was handcuffed. Rocheleau had to be lifted up because he was reluctant to move on his own and was flailing with his legs. This officer states that no one struck Rocheleau when he was being subdued. He states that the principal objective was to hold Rocheleau down on the ground. This officer cannot state whether Rocheleau was handcuffed behind his back, but says that that is the normal way handcuffing is done. This officer states that no blows were struck to Rocheleau as he was moved down the hall to the "M" Cells.

Officer Anderson actually did the handcuffing. This officer had a hold of one of Rocheleau's arms, and Officer George had a hold of the other. The handcuffs are of the type that have to be squeezed in progressively tighter concentric circles. This officer did not notice how tight the handcuffs were on Inmate Rocheleau's hands, or whether any marks were made on the hands of Inmate Rocheleau.

The removal was conducted this way: that is, handcuffing is not done at the first instance, because the inmate may become provoked at being thus shackled prior to creating any difficulties. The operating problem, this officer states, is that they must wait until there is a disturbance before they use handcuffs.

4. June 24, 1973: Events in "M" Cells

States that the inmates were just put into the cells and that the handcuffs were removed from Rocheleau, that there were no problems once the inmates were down in these cells. States that there was some shouting from other inmates, a knife threat, and that two of the officers went into that cell to search that cell. States that the inmate in that cell was not struck at that time. States that to his knowledge there was no gas or mace in use in this area at this time. States that he had no gas or mace in his possession.

Initially, during his testimony, this officer denies allegations of Inmate Kemp posed in hypothetical form with regard to the use of mace in his face and blows from Schlegel down in the "M" Cells, delivered in Kemp's cell, after Rocheleau had been brought to the "M" Cell area.

Admits he had occasion to enter the cell of Inmate Kemp, after having moved Rocheleau and Harwig to the cells on June 24, 1973. States that Kemp had made a derogatory remark, so they opened and entered. States that Kemp was acting as if he had something under the pillow, so that they lifted the pillow and checked underneath it, checked also in the cell to make sure there was no contraband in the cell. Does not recall any obscene admonition from Kemp, or response of his to this effect: "Who do you think you are telling to fuck off?", or words to that effect. He states that Mr. George

was in the cell with himself. States that they did not have to remove Kemp from his bed in order to search him. States that he did not strike, slap or touch Kemp and that Kemp was on his bed. States that he had no gas-dispensing device on his person or in his hand. States that no other guard had gas, to his knowledge. States that he didn't see anybody shoot gas into Mr. Kemp's face. States that he didn't do it. States that he would know from the smell if gas were used. States that Mace is not available to personnel at the Institute but that tear gas is. Nothing has to be signed to have mace or tear gas issued from the Guard Room. Not just anybody can get hold of this material because it is locked up. It would be the senior officer who would have it. This officer is a senior officer on this occasion.

States that the smallest gas-dispensing device is a black spray bomb. States that this is kept in the Guard Room under lock and key. States that he did not see anyone with an item of this nature in his possession in the "M" area on this day. States that he did not spray Mr. Kemp in his cell. States that if tear gas were used in the cell area, that everyone would be aware of it because of the smell it carries around. States that tear gas "sort of has a smell of its own, something like burned almonds, or something to that effect". States that tear gas does not smell like ether. States that it was Norm George who opened the door to Kemp's cell.

The "M" Cells have bars in front of them, so if gas were used, it could move from one cell to another.

States that a threat was made by Inmate Kemp to the effect that he would get Schlegel. States that he did not tell Kemp to keep his mouth shut in an obscene manner, or to be quiet. The search of his cell was related to the nature of this threat. States that he doesn't think he told Inmate Kemp anything to the effect that he thought he was going to teach him a lesson.

States that if Kemp said "Oh, my eyes!" , that he is possibly a liar, as he didn't hear Kemp say anything. States that if Kemp said it was Schlegel who slapped him, that Kemp is definitely a liar, and states that if Kemp said that Schlegel had used mace that he was also lying. States that the inmates have gotten together and colluded and coached each other with their testimony, and that they are out to make it rought for him. States that this does not bother him, that he can handle this. Quite explicit in his own mind that the inmates are lying.

5. General

This officer indicates that, by way of previous report from the Correctional Institution at Regina, by way of his own sixth sense of experience, that he had always felt that Rocheleau was a potentially dangerous inmate.

This officer states that some days after the incident Inmate Rocheleau approached him and stated that he had acted in a bad way, and justified his behaviour in terms of withdrawal from the effects of drugs.

This officer states under cross-examination that because this inmate was a remand prisoner and not a sentenced inmate, that it would not be his responsibility to decide whether or not this inamte "is filled up with junk and that I should be doing something with him". The officer does acknowledge that the inmate is under the rules and regulations of the Institution at this point, even though he is only on remand. This officer was unable to, or would not answer the question or proposition put to him as to whether or not it is or was not a duty of his to find out if people are undergoing reaction to various types of drugs when they are inmates of the Institution.

This officer further states under questioning that the presence or absence of withdrawal symptoms from drugs would not affect his decision to place such a person in the "hole". That is, "if he is in withdrawal symptoms and -- I would still carry out the rules and regulations of the Institution because if he committed some violation against one of the officers he would be put in the isolation cells".

The position of this officer, after repeated questioning in this area, is that it is the responsibility of the prisoner to raise the issue re withdrawal symptoms himself. That is: "let me tell you something". "If he had said: 'I am on withdrawal symptoms', I am quite sure that the Institution would have done something that we would have thought proper for him." Further, if he had said 'I am going on withdrawal symptoms', I will practically guarantee that he wouldn't have been put down there, that he would have been put up in the cell, and that is the best we can do for him." Further, the position this officer seems to have taken is that no one told him this inmate was undergoing withdrawal symptoms and that this fact only became manifest some weeks later.

As indicated under cross-examination at page 832, the position referred to in foregoing paragraphs, is somewhat dissimilar than the reaction of this officer during the earlier portions of this cross-examination.

The presence or absence of withdrawal symptoms only affects whether or not the inmate is put into isolation cells or the observation cells, as the case may be. The existence of withdrawal symptoms is not ordinarily sufficient basis to not lay a charge in any particular incident.

Carrol Edwin Anderson

1. June 23, 1973: Events

Not applicable

2. June 24, 1973: The Disturbance: The Removal from Segregation

Having been called at the Guard Room by Officer in Charge with regard to the disturbance being heard emanating from the Segregation Cells, this officer consulted with A. D. W. Schlegel and A. D. W. Schlegel and himself decided that Inmates Harwig and Rocheleau should be moved from the Segregation Cells to the "M" Cells. The purpose of this move was to take these inmates away from the large body of inmates whom they were disturbing at that time. This officer, A. D. W. Schlegel, Officer George, Officer Sharp and Officer Rice then proceeded to the Segregation Cells to effect this purpose. When they entered the area there was quite a noise, namely, banging and shouting and pounding on the doors. This officer states that he believes that A. D. W. Schlegel opened the cell where Harwig was and that Harwig was brought out, and that he believes that Officer Sharp carried on escorting Harwig to the Segregation Cells under the Guard Room. This officer did not observe any force used on Inmate Harwig when he came out of his cell, when he got into the hall, etc. After getting into the hallway this officer was with Officer George and A. D. W. Schlegel escorting Inmate Rocheleau down the north hallway.

This officer states that Inmate Rocheleau came out of his cell on his own power and that no force was used on him in this area, in his cell, or in the hallway and in front of the Segregation Cells.

3. June 24, 1973: The Fight in the Hall

This officer states that no force was used until A. D. W. Schlegel and Officer George grasped Inmate Rocheleau by the arm in the hallway and pushed him down the hallway, whereupon Inmate Rocheleau turned and struck Officer George in the face, which this officer saw happen. He states that Inmate Rocheleau hit Officer George with his fist. He state s that there were no blows from Officer George or A. D. W. Schlegel before this blow was delivered.

This officer called for someone to bring handcuffs, and they were brought. By this time Rocheleau was on the floor and being held by Officer George, A. D. W. Schlegel and this officer. After quite a struggle, with Inmate Rocheleau still fighting and kicking, he was handcuffed. The cuffs were put on behind Inmate Rocheleau's back.

This officer hung on to Inmate Rocheleau by the cuffs, and Officer George and A. D. W. Schlegel held on to him by the arms. This officer states that Inmate Rocheleau was still fighting and struggling as much as he could with his hands cuffed".

4. June 24, 1973: Events in the "M" Cells

After Inmate Rocheleau was placed in these cells, the cuffs were taken off him. The door of the cell was locked. At this time there was shouting from other inmates in the other cells in this area. This officer does not recall A. D. W. Schlegel or Officer George going into these other cells. This officer states that none of the officers in the area at that time had instruments which would spread gas.

5. General

In response to questions with regard to the technical capacity of handcuffs used on Inmate Rocheleau, this officer testified to the effect that the handcuffs used are a ratchet type which will keep tightening and tightening under progressive bumps or pressures.

This officer states under cross-examination that he actually saw Inmate Rocheleau and Inmate Harwig come out of their segregation cells, but that he was not in a position to see what was going on in within either cell. He also states that so far as he knew it was Officer George that opened both cell doors.

This witness states he is aware of the fact that if the handcuffs used are tightened to a sufficient degree they can mark a person's hands. He specifically states that he did not put the handcuffs on too tight. He also states that if the person wearing the cuffs is resisting them or fighting them, that they could cause cuts to that person's hands. This officer also testifies that the handcuffs would have been on the inmate for approximately five to six minutes.

SECTION 3.2.3 Testimony of Inmates

Frederick Alexander Rocheleau

1. June 23, 1973: Events

States that he was smoking at the movies on Friday night (June 23), so told to go back up to the cell block by a guard. Told he would be put on charge if he didn't go, so he proceeded to the cell block. On his way up one of the guards on duty asked him what cell he was in. He did not answer. He continued on to his cell. States "when I got to my cell I slammed the door of the cell and he told me "whenever I ask you something you answer me". "I turned around and told him I didn't have to fucking well answer him if I didn't want to". States further that as a result of this, this guard went and got Mr. Schlegel and Norm George, and that he later ended up in the Segregation Cells overnight.

This inmate denies that he raised his fist at Sharp on the 23rd of June, 1973, but states that he could have told him to "fuck off".

2. June 24, 1973: The Disturbance, Removal from Segregation

States that the next day he started having withdrawal symptoms, and therefore started kicking on the door of the Segregation Cell to get it open. States that he had withdrawal symptoms from heroin, and that the reason they were occurring was that he had no heroin in Segregation Cells.

Prior to being extracted from the Segregation Cells, this inmate admits to banging on the door for at least twenty minutes, producing a steady pounding. He states that someone around him was doing it as well.

The inmate states with regard to withdrawal: "My nerves and everything just started giving out. I just started spinning off." "Just like as if the room kept on getting smaller and smaller." Heroin, he agrees, affected all of his senses.

He states that door kicking was ineffective and, after a while, lay down. Shortly, Schlegel and Norm George appeared and told them to get going somewhere and he refused to get up. He was told to get up a second time; as he was getting up George attacked him. This was right in his cell. He was just trying to get oof the bed. He states that George grabbed him by the hair, pulled him off the bed and onto the floor and kept on telling him to get up and kept on kicking him around the ankles and in the back. Pushed, kicked and

shoved out of the cell, upstairs out into the hallway by Norm George and Schlegel, telling him to hurry up and go faster. Inmate from same area was taken out ahead of this inmate.

Under cross-examination, the inmate states that withdrawal symptoms did not impair his sensory capacity, i.e.: he reconfirms he was pushed, kicked and shoved in the heel and calf areas of his legs on the way out of the cells.

3. June 24, 1973: The Fight in the Hall

States that he lost control of his temper at the point where they have the control over the gates at "the remand", turned around and struck Mr. George in the face. After a struggle he was subdued and "Norm George slapped handcuffs on me and kept applying pressure to the right wrist, which left the scars.

He states that when he was subdued, Sc hlegel had his knee on his head as he was on the floor. States that no one struck him with their fists while he was being subdued. States that from this point to the "M" Cells he was pushed and was walking as fast as he could.

This inmate states that after he was being taken down the hall with handcuffs on behind his back, he was no longer kicking and struggling.

Inmate states that he was kicked and pushed all the way from the cells to the point where the altercation froke out, and pushed thereafter on the way to the "M" Cells. The kicks would land on the back of his legs and the calves, the pushes would be delivered by hand, to his shoulders and back.

This inmate states that it was Mr. George who applied pressure to the right wrist, to the handcuffs, causing marks on that wrist. Those marks were shown to the Commissioner and are still there. The inmate states that the cuff was not tightened by his struggling but, rather, that Officer George kept positively applying pressure to it, cutting off circulation.

4. June 24, 1973: Events in the "M" Cells

Locked up in a cell. Told to get on stomach, and they took the handcuffs off. Door closed. States that Cater says at that time, "If there is any more noise out of any of you bastards down here, I'm going to deal with you personally". Observed no other scuffles in the area at that time.

States that he heard Schlegel and Cater in the cell next to him, each cell having bars at the front. Said he heard the other inmate screaming and felt that apparently mace had been used on that inmate. States that no mace or gas came into his cell.

5. General

This inmate states that after being put in segregation, this was the first time that he had to "dry out" in this manner. This inmate had never been in any closed-in cells before, only the cells with bars. The "hole" in Regina has bars in the front. The inmate states that the withdrawal symptoms down in the "M" cells were not as severe, because he did not feel so closed in with the bars out in front, and he could see what was going on and could hear other things.

The inmate states that his heroin habit is four caps a day. He couldn't get heroin in the Segregation Cells, and that he was able to get heroin in the cells that he was originally removed from. He states that he had or has fifty to sixty caps in his possession or effective control. The caps were kept with another inmate. The caps came in with this inmate when he arrived from Regina. Whilst at the Institution, this inmate was using two caps a day in order to prolong his supply. The drug was taken by a syringe. The syringe was kept with another inmate. Rocheleau would take his fix in his cell. The syringe is brought in to him. A cleaner brings it to him.

Using two caps a day, the inmate states: "I was bitchy." Two caps a day would "keep me". The inmate started his habit in November, on about half a cap a day, and now had worked up to four caps a day. The inmate was also getting heroin at the Regina Institution.

The inmate states that the sixty caps came into the Institution within his property, which was in the possession of the R. C. M. P. He states that the sixty caps were inside his wallet. He states that he is not suggesting that the R. C. M. P. knew this stuff was in his wallet, but simply that his wallet and none of his possessions were searched, that he knows of.

As far as this inmate knows, none of the guards knew about his heroin. If the guards knew anything about the presence of the substance, they did not do anything about it. The reason for keeping the heroin elsewhere than his own cell is that, in Regina, his cell was always being checked for knives and other contraband material. The other inmate stashed the heroin for him in return for being allowed some for his own use. This inmate states that no pressure on the other inmate was required because of this.

Upon being asked whether or not he has ever known any guards or prison staff at the Calgary Institution "to either approve of or wink their eyes at or encourage you to have drugs or anything of that nature", this inmate states: "There are guards that you can make deals with, and there are guards that you can't." This inmate then refused to name any guards that he "could make deals with". On being directly questioned at this point by the Commissioner, this inmate then stated that he knew of no guards with whom one could make a deal.

At page 891 of the Inquiry, the Commissioner made the following remarks with regard to the inference that guards may have made drug deals with any inmates:

> "Now in view of this situation and in view of the seriousness of these allegations, my concern would be that it would be hearsay evidence of the rankest kind. It will be hearsay evidence which would not only put this young man in serious personal danger, but it would also indicate perhaps by innuendo the names of other officers, and I don't believe that would be proper at this time. If somebody will come forward and say 'I made a deal with Correctional Officer so-and-so', then most certainly I would like to hear that evidence. But under this Inquiry I do have the scope that I can make evidence -- I can admit it. I can give wide latitude or I can be pretty strict. In this case, I am going to be very strict."

Under cross-examination, this inmate acknowledges a record of his behaviour, signed by a counsellor at the jail at Regina, Saskatchewan. Although this letter was acknowledge by Rocheleau, it was not entered as a formal exhibit, because the Commission deemed it possible that the information disclosed therein was elicited from Rocheleau on the understanding that it was confidential. The charges against this inmate in Regina involved the use of weapons against other prisoners, not against guards.

This inmate had previously requested medical attention for withdrawal symptoms when he first came to Calgary. He went to see the psychologist and to a psychiatrist, Mr. Taylor. Apparently he was referred by Warden Jackson to the psychiatrist or to the psychologist.

This inmate did not ask for any medical attention for the cuts on his right hand from the handcuffs.

This inmate denies speaking to A. D. W. Schlegel shortly after this incident and telling A. D. W. Schlegel that he "now had his head screwed on right". Conversely, this inmate confirms that he did speak to Officer Rice with regard to the reason for his refusal to leave segregation being related to the fact that he had nothing to lose.

The inmate states that at the Regina Institution he carried a sharpened knife with him and that all inmates have their own cutlery in their cells. He states that a knife might be required to be used on a "rat" or a "skinner". He states that he has used it on one or two persons in these categories or because this inmate did not get along with them. The age of this inmate is eighteen years, born in Prince Albert, Saskatchewan; weight 160 pounds, height 5' 11". The inmate states that he is a fairly strong person. The inmate states that he still has a sore shoulder from the struggles to subdue him, and is unable to lift weights with it. X-rays of the shoulder were taken after the incident.

John Bernard Harwig (pages 898-926)

1. June 23, 1973: Events.

Placed in the Segregation Cells on this day for refusing to work. States there are twelve cells in the area, six on one side and six on the other side that are not used. The cells that are used are on the right-hand side as the door is entered. States located in Cell No. 4. States that Inmates Wallace and Buettner were in the cells next to him on one side, and Al Jensen and Rocheleau and Sims on the other side. To the knowledge of this inmate, all the cells were filled.

2. June 24, 1973: The Disturbance, The Removal from Segregation

Gets up for a visit at 2:15 to 2:30, upstairs. When he returned, the rest of the inmates in the segregation area were making noise. The noise consisted of banging the doors of the cells or shaking the doors, possibly kicking the doors as well. Noise stops and starts when guards are present locking the doors, and after they leave. He states that he kicked the door about three times but stopped his activities because he had some tobacco with him that he wasn't supposed to have. Asks inmate next door, being Jensen, to stop the noise, becuase he has some tobacco. Jensen asks him for some tobacco and he is involved in getting tobacco into Jensen's cell when he hears the officers arriving.

Hearing the officers coming, runs and sits on bed and pretends to read the Bible. Hears some talking outside. Next thing he knows, cell door is opened and A. D. W. Schlegel comes in. States that A. D. W. Schlegel jumps on top of him on his bed and that Mr. George is in the cell as well. Two other guards, not named, may have been in the cell as well. States that Schlegel charged in, sat on his chest, grabbed his neck and grabbed his left arm. States that Schlegel said "Who do you punks think you are?". States that Schlegel twists his arm and squeezes him around the neck and that the result of this are marks on his neck the next day. He states that he stayed relaxed to stimulate no further acts, and shortly he was told to get up, and he gets up and is pushed out of his cell. He states that his neck was squeezed with Schlegel's hands. States that he did not seek any medical attention after this; the injuries were not serious enough. He states that the marks on his neck were red bruises from pressure.

States that someone other than Mr. Schlegel may have opened the door of his cell. States that his cell was the first one opened. States that nothing was happening to Inmate Rocheleau while he was being attacked or moved from his cell. States that he was put in the hallway before the guards opened Rocheleau's cell and went into it.

He states that he heard a struggle in Rocheleau's cell, but that he could not see what was being done in the cell. No question in his mind that both Schlegel and George entered Rocheleau's cell as well as his own. States Rocheleau was pushed out of his cell precipitously. States that they were both pushed along the hallway outside the cells and up the stairs. States that he was pushed again by Schlegel once they were out of the cell-block gate and in the hall. States that he was told "keep moving". States that he quickened his pace because he was not looking for trouble.

3. June 24, 1973. The Fight in the Hall.

States that he saw Rocheleau grabbed by guard behind him, and a pile-up. He states there were four guards involved in the pile-up and that he was standing by himself at this time. Looked for help from other inmates in the barber shop but found it locked. At this time a fifth guard adjacent to him, being Officer Sharp, persuades him not to get involved in the melee behind him. States that this fifth guard came from the Guard Room and spoke with a Scottish accent. States that Rocheleau was being hit and held, all at the same time, and that he was not hitting, because his arms were pinned. States that he did not see Rocheleau down on the floor. States

that Rocheleau was pinned up against the wall, with one guard holding each of his hands or arms. He states that he saw A. D. W. Schlegel and Officer George strike Inmate Rocheleau. He then proceeded to "M" Cells with guard accompanying him.

4. June 24, 1973. Events in the "M" Cells.

Sharp takes him down to segregation, there for three to four minutes and hears a little yelling and screaming. Then Inmate Rocheleau is thrown in his cell. Did not see the activity in the cell into which Rocheleau was thrown. States that he heard Inmate Kemp then say something. There was then a response from A. D. W. Schlegel to this effect: "Don't tell me to fuck off. Who are you telling to fuck off?" Then states that he heard Schlegel state to a guard: "Open that cell." He states that he heard the cell open and heard another scuffle. States that Cater then came down to his cell and said, "Another peep from you, Harwig, and I will come down and see to you personally." States that he made no further disturbance that night. States that Cater did not come back during that night.

5. General

This inmate admits to having a criminal record of this nature: two charges of breaking and entering, one of theft, one of attempted breaking and entering, one of damage, one of possession of stolen property, and another of theft over, plus possession of a narcotic, and another theft under charge, plus another six months for theft. At the time of these charges, the inmate admits to being addicted to heroin. This inmate also admits violations of prison rules from time to time. This inamte has no convictions for fraud or perjury.

The inmate admits to having his tranquillizers administered to him as medication in jail, and to using some marijuana in jail. States that the drugs given to him for medicinal purposes were saved by himself to be taken at a later date all together.

Inmate states that there is a mirror in his cell. After confirming th existence of marks on his neck the day following the incident in question.

Inmate states he was aware that his letters to the Ombudsman were going out of the prison uncensored and states that he has no objection to his letters to the Ombudsman being compared to his testimony of this date. He states there were some misunderstandings in his correspondence with the Ombudsman.

Under protection of the Canada Evidence Act with regard to drug use, inmate states, after some hesitation, that he was not on medication drugs on June 24th, but that he had been under medication from the psychiatrist on June 17th. These drugs were not vallium or librium, their colour was orange and white. On that day, apparently, inmate states he had had a whole orange capsule and half a white capsule. He states that they might have been "placebo". He finally states that he was not on any drugs, medication or otherwise, at the time of the incident of June 24th.

He states that his eyesight was 20-20 and that his mind was working properly at the time of the June 24th incident.

Inmate states on cross-examination that he has never seen any guards or custodial staff condone the use of hash, heroin or marijuana in the jail. He states that his cell has been searched from time to time to try and find drugs and that there is very little drugs in the Institution.

Robert Earl Sims

1. June 23, 1973: Events

Not involved.

2. June 24, 1973: The Disturbance: Removal from Segregation

Involved in the noise-making, kicking the doors of his cell in the segregation area. The other inmates in the segregation area were kicking their doors as well. He states that the kicking had been going on for about one-half hour, describes as a release of pent-up energy. No special reason for the kicking. States that the kicking stopped after Harwig came back from his visit. They heard a key in the door. States that five minutes later heard two cells being opened, "They just took the two guys out and threw them down, down beside my cell. Took them out to segregation." States that Rocheleau and Harwig were in cells further down from him. States that he saw one guard push Rocheleau, and that he saw Harwig get pushed by his cell. States that he then saw A. D. W. Schlegel and Norman George walk by. He states that Rocheleau came by his cell first, and that Harwig followed. He states that he heard stuff like: "Don't hit me. I didn't do it." States that he heard sounds to the effect that someone was getting a licking but could not observe this. States that the block quieted down after these two inmates were removed. States that he was not on the

"dark side", but on the other side, which would be the right side of the view shown in Exhibit 23. States that what he saw was through the peephole in the door of his cell. States that he was in Cell No. 1.

3. June 24, 1973: The Fight in the Hall

Not there.

4. June 24, 1973: Events in the "M" Cells

Not applicable. Not there.

5. General

No testimony included herein.

William Austin Kemp

1. June 23, 1973: Events

Not there. Not applicable.

2. June 24, 1973: The Disturbance: The Removal from Segregation

Not there. Not applicable.

3. June 24, 1973: The Fight in the Hall

Not applicable. Not there.

4. June 24, 1973: Events in the "M" Cells

Located in the cells at this time. Charged with making a disturbance. States that these cells are separated by a wall, and that the front of the cells are bars. States that he was in a cell by himself at the time of his entry to the cells. Nobody next to him. His cell the first against the wall on the other side. There was an empty cell between himself and Wallace Graham. Exhibit 27 is a part of this area, but does not show the cell he was in.

States that he heard a lot of yelling and screaming the night Rocheleau and Harwig were brought down by the guards. Rocheleau was placed between himself and Graham in the empty cell. Harwig was put over on the other side. Thinks that he heard Cater go to Inmate Graham and tell him to keep his mouth shut or he would get some of the same, that is, "They were treating the guys kind of bodily, and that". Did not observe any of this activity directly. His cell was not passed when the inmates were put in, so all he does is hear sounds. Hears scuffling and yelling and screaming and that's all. States that Graham did not say anything. States that Schlegel came to his cell and said "Don't you say a word too, or you will get the same." States that he told Schlegel "to go fuck himself". States that Schlegel "flipped out" right there. Schlegel told one of the other guards to open the cell. This was done, and he was thrown down on his bed. He states that they then used some mace on him, which burned him. He states that he was trying to protect himself by holding his arms in front of his face, because they were slapping him at random because they could not get at his face. He states that Schlegel was doing it and he doesn't know who the others were for sure. He states that they were not using billies or weapons. He states that the gas smelled like ether. States that he was "telling them all to fuck off" whilst this was going on.

States that the slaps with open hands did not bruise him. His testimony is that he did not strike any of the guards during this interval. States that his eyes burned for about fifteen minutes, and watered, and his face got red. States that he told Inmate Graham about having something that smelled like ether squirted into his eyes. States that about five guards had come into his cell. States that whatever was squirted into his eyes must have been in Schlegel's possession when he came into his cell. States that he did not look at Schlegel's hands or see anything in his hands before this alleged assault. Also, inmate states that he saw Mr. Merriam with a can of mace, and knew what it looked like, that is, a black can about six inches long and three inches or four inches in diameter.

Under cross-examination, there is an inconsistency between a reference therein to a can of mace in Schlegel's hand, and the statements referred to above, he suggesting there was nothing in Schlegel's hands. In cross-examination states further he cannot be certain that it was Schlegel who had this substance.

5. General.

States no complaint made that night or the next day about this treatment.

Wallace Johnson Graham

1. June 23, 1973: Events

Not present. Not applicable.

2. June 24, 1973: The Disturbance, The Removal from Segregation

Not present. Not applicable.

3. June 24, 1973: The Fight in the Hall

Not present. Not applicable.

4. June 24, 1973: Events in the "M" Cells

On the night in question was lying on his bed in Cell No. 1; No. 2 is vacant; John Kemp is in No. 3. After door opens to area and Schlegel, Cater and other officers bring inmate in, using slight force to bring him in and put him in Cell 2 beside him. This is Inmate Rocheleau. States that Cater then turned to him, swore, and stated that he should keep quiet "if he wished to stay healthy". States that Kemp was spoken to in the same manner by A. D. W. Schlegel, and Kemp swore back at Schlegel. States that Schlegel then got excited, had Kemp's cell opened, went into that cell, and that he heard sounds of slaps and yelling and then "Oh my eyes! Oh my eyes!" and that he couldn't see. He states that Kemp had yelled to him: "They sprayed me. They sprayed something in my eyes and I couldn't see what was going on. He states that Kemp said to him that he had had his hands up and that they had tried to beat him up.

Established in cross-examination that the open bars permit the circulation of sound, and that air circulates and that therefore gas would circulate if it was used. States that no gas came into his cell, and that he smelled nothing unusual in the cell.

5. General

States that Rocheleau was not actively resisting when he came in, just exhibiting reluctance to go into the cell.

Walter James Cater (Custodial Staff)

1. June 23, 1973: Events

Not present. Not applicable.

2. June 24, 1973: Disturbance and Removal Isolation to "M" Cells

Not involved. Not applicable.

3. June 24, 1973: The Fight in the Hall.

Not involved. Not applicable.

4. June 24, 1973: Events in the "M" Cells

States that he was present in the "M" Cells approximately 4:10, which is part of his shift responsibility to make sure things are in order in that area. States that Inmates Rocheleau and Harwig were in the cells in that area at the time he went to the area and states that there was nothing out of the ordinary going on at that time. He states that he never went into any of the cells in that area at that time. He states that he did not observe any officers in the cells during his tour of the area that day. States that he went down to the area alone.

SECTION 4.1 FINDINGS AND CONCLUSIONS: THE INCIDENT CONCERNING INMATE NURSE

SECTION 4.1.1 Findings of Fact; The Incident Concerning Inmate Nurse

1. The Commission finds that about lunch time on July 20th, 1973, Officer Cater removed one of three signs on the bed locker of Inmate Nurse, located in the West Wing. The Commission finds that the sign in question was attached to the locker of Inmate Nurse in a manner formally in contravention of a specific regulation covering the attachment of such posters, posted in the West Wing. The Commission further finds that since the poster in question made implicit reference to drug distribution, that it was provocative in that sense and thus formally in contravention of the jail regulation covering the subject matter of posters, referred to in the testimony of Officer Cater.

2. The Commission finds that Inmate Nurse refused to take down the balance of the posters located on his locker after Officer Cater requested him so to do, and that as a result of this refusal he was informed that he would have to be put on charge, firstly by Officer Cater and secondly by A. D. W. Merriam.

3. The Commission finds that Institution Regulations with regard to locker posters must be regarded as leaving some discretion as to their interpretation in the hands of custodial staff, at least with regard to their qualitative aspects, given the wording of the regulation per se, as referred to in the testimony of Officer Cater. The Commission stated that no other evidence before this Inquiry, save that testimony pertaining to drug distribution referred to in the foregoing, indicates that general rigidity or looseness with which the poster regulations are commonly enforced.

4. The Commission finds that Inmate Nurse was wearing beads around his wrist or wrists at the time of the incident in question, and that as the incident developed he was ordered by Officer Cater to remove these wrist beads forthwith on the spot by Officer Cater, because they were against regulations. The Commission finds that Inmate Nurse refused to remove the beads, standing where he was, and indicated that he would remove them back at his bed.

5. The testimony of Inmate Nurse indicates that he wished to remove the beads at his bed with a razor blade, so that he would not lose the beads, and finds that this reasoning was a factor in Inmate Nurse's refusal to remove

his beads forthwith on the spot, as instructed by Officer Cater. The Commission further finds that there is no indication in the testimony of Inmate Nurse that he communicated this reason for not removing the beads on the spot to Officer Cater or Officer Merriam prior to the time that the scuffle relating to his removal from the Wing broke out.

6. The Commission states that there is uncontradicted evidence before the Inquiry which indicates that a large number of the inmates, including Inmate Nurse, had been allowed to wear beadwork for varying lengths of time prior to the incident, despite the indications of the custod ial staff in their testimony that such beadwork as worn was contraband, in terms of the formal regulations of the Institution.

7. The Commission states that in total there is some convlict and confusion within the testimony of Inmate Nurse and Officer Cater as to how the altercation pertaining to the removal of Inmate Nurse began and was continued. Firstly, Officer Cater describes attempting to place his arm around the shoulder of Inmate Nurse to move him away, and a swinging arm reaction from Inmate Nurse which caught him on the chest. Thereafter, Officer Cater decided to obtain more help, and had Officer Wood telephone the Guard Room for same. Inmate Nurse states that Officer Cater asked also for billy clubs. Officer Cater states that the removal could have been effected by himself, but only three days had passed since the July 17th incident and he wished to have witnesses.

8. The Commission finds that the physical removal by force of Inmate Nurse began after these events, after A. D. W. Merriam and other officers had arrived in response to Officer Cater's call for assistance, and after A. D. W. Merriam had repeated Officer Cater's request to Inmate Nurse that he proceed to Segregation voluntarily.

9. With regard to the forcible removal which then began, Inmate Nurse states that Officer Cater hit him, that he subsequently fell into the corner among garbage cans, that the other guards jumped upon him and beat him, and that he was thereafter dragged out into the hall and sprayed with mace or tear gas during that interval.

10. Conversely, Officer Eadie states that he and Officer Cater approached Inmate Nurse to remove him after A. D. W. Merriam had warned him, and that he then ducked a punch from Inmate Nurse and pinned Inmate Nurse against the wall by the

stomach. Officer Eadie states his billy club was in his pocket at that time and that he did not see Inmate Nurse punched by Officer Cater or anybody at this time. The position he described above became a bear hug on the body of Inmate Nurse, the group then fell down, other guards became involved, and the resisting inmate was moved out towards the hall, at which time he states A. D. W. Merriam used the "mini-streamer" or gas billy on Inmate Nurse.

11. Comparatively, Officer Cater states that he put his hand on Inmate Nurse's shoulder and that at the time a billy club came across from behind and hit his hand and the shoulder of Inmate Nurse at the same time. Officer Cater also states that Inmate Nurse had started kicking and fighting just prior to the action described above, and that Inmate Nurse had kicked him in the leg. Subsequently, Officer Cater describes grabbing Inmate Nurse with a head hold, a tear gassing by A. D. W. Merriam, a melee on the floor with Inmate Nurse under him and Officer Eadie on top of him. Officer Cater does not remember hitting Inmate Nurse during this interval or seeing any other officer punching Inmate Nurse at this time.

12. The testimony of A. D. W. Merriam is to the effect that Inmate Nurse was not hit before he began to kick and swing, after being warned he should leave voluntarily, that Officers Eadie and Cater were the two who had access to him and moved forward to grab him in the corner where he stood, that Officer Eadie had his billy club in his pocket, that Officer Eadie did not later hit Inmate Nurse in the body, that he (Merriam) gassed Inmate Nurse in the corner position referred to above, and that the whole struggling group remained upright generally until the time they all fell through the West Wing door.

13. The testimony of the inmates who viewed the incident from the grill gate area of the West Wing is mixed, with regard to whether punches were thrown or not and by whom they might have been thrown. It is also mixed with regard to whether or not gas was used, although the testimony of Inmate Kemp refers to A. D. W. Merriam's use of mace as being in the corner of the West Wing lobby and not later, as indicated by others. The evidence as to whether billy club blows were delivered, and by whom they might have been delivered, is also mixed and inconclusive.

14. In total, the Commission finds that Inmate Nurse was removed forcibly from the West Wing lobby or vestibule after having refused repeatedly to go voluntarily, by wrestling him under control and by the use of mace or tear gas by A. D. W. Merriam. The Commission finds that no blows were struck with billy clubs during the removal, save that blow referred to by Officer Cater which landed on his hand and on the shoulder of Inmate Nurse.

15. Because the evidence put forward in the course of this Inquiry does not clearly indicate that any officer in the West Wing vestibule had a club in his hand during the time in question, the Commission finds that it is not possible to determine who delivered the blow which struck Officer Cater and Inmate Nurse simultaneously.

16. The Commission finds that, given the proximity of the removal and struggle to the West Wing grill gate, and the visual capacity of the inmates standing at that gate to observe and become involved in the altercation from the other side of the grill gate, once the custodial staff were committed to putting Inmate Nurse on charge and removing him, it was in order for the custod ial staff to proceed to effect this purpose with efficiency, in order that the attitude of the inmates within the West Wing might not become rebellious and inflamed as a result of viewing a prolonged struggle of this nature.

17. The Commission find s that Inmate Nurse was removed off his feet in order to extract him through the West Wing door, and states that during this part of the removal from the West Wing lobby, the officers and staff attempting to control him and remove him by this means lost control of their actions to the extent that the entire goup in effect fell through the West Wing doorway. The Commission finds that after falling through the West Wing doorway in this manner, Officer Eadie obtained an arm lock on the left arm of Inmate Nurse, that A. D. W. Merriam grabbed Inmate Nurse'-right arm, and that Inmate Nurse effectively ceased struggling and kicking at that juncture and was in a walking manner carried down the hallway towards Segregation by these two officers.

18. The Commission finds, with reference to the testimony of A. D. W. Merriam in this regard, that the question as to whether or not gas or billy clubs should be used to quell disturbances, is left to the discretion of the officers, down to the C. O. 2 level, generally, who have control of these

items, fundamentally within the Guard Room. A. D. W. Merriam, when further questioned, indicates that he has used gas only three to four times in the last eleven years. In this context, there is specific testimony from Officer Cater to the effect that as far as he is concerned, there was no need for any use of gas, and that Nurse could have been subdued by two officers. Officer Cater also is aware of the fact that Nurse was only 5' 6" tall and weighed 135 pounds. With regard to the question of instruction in obtaining physical holds to control or take an inmate, the Commission finds that there is no indication that any of the officers involved in this incident had any such instruction. In this context, Officer Eadie refers to having taken a riot control course under the auspices of the City Police some three years ago, but states that he has had no specific instruction of this nature as a Correctional Officer.

19. The Commission finds that Inmate Nurse was placed in the Segregation Cells overnight and that he was placed in the Observation Cells thereafter for approximately one week, for reasons relating to the fact that he was under medication for an epileptic condition. The Commission finds that after the expiry of this one-week interval, Inmate Nurs- was taken to Warden's Court, was found guilty, and given a week's loss of privileges. Since Inmate Nurse had already been in Observation Cells for one week, he was sent back to the West Wing. The Commission finds that Inmate Nurse's injuries were blackened eyes, bruises on his chest and ribs, and a minor lip cut.

SECTION 4.1.2 Conclusions: The Incident Concerning Inmate Nurse

1. The Commission concludes that Inmate Nurse was put on charge on the day of this incident, for refusing an order to remove posters from his locker, and to remove wrist beads from his wrists. The Commission further concludes that Inmate Nurse, upon being told that he was on charge, refused to leave the West Wing voluntarily.

2. The Commission concludes that force was used to remove Inmate Nurse from the lobby or vestibule of the West Wing, that is, Inmate Nurse was wrestled to the ground or wrestled under control, principally by Officers Cater and Eadie. Immediately thereafter, Inmate Nurse was also brought under control by the use of tear gas sprayed in his face by A. D. W. Marriam. The Commission further concludes that Inmate Nurse was punched in the face and hit with a billy club, as well.

3. The Commission states that, given the small size and weight of Inmate Nurse and the colour of some of the testimony of Officer Cater, there are indications that fewer persons might have been able to bring Inmate Nurse under control and that gas might not have been necessary to effect that purpose. However, in the circumstances, it was imperative that the resistance be terminated with dispatch so that the inmates within the Wing would not be inflamed through observing it, and the evidence before the Commission is clear that Inmate Nurse stated he intended to offer strenuous physical resistance to the custodial officers, and then proceeded to do so. Accordingly, the Commission finds that the force used in achieving the objective of removing Inmate Nurse was not excessive.

4. The Commission concludes that the evidence with regard to this incident indicates that there is a complete lack of training of the Institution staff in the general notions of unarmed combat, and the use of appropriate "come on" holds, as these techniques pertain to the general problem of subjugation and removal of resisting individuals.

SECTION 4.2 SUMMARY OF EVIDENCE: THE INCIDENT CONCERNING INMATE NURSE

SECTION 4.2.1 Location of Witnesses, Background, Roles: The Incident Concerning Inmate Nurse

Custodial Staff

Walter James Cater

Biographic information on this individual is contained in the appendix to the West Wing incident. This officer became involved in this incident when he requested Inmate Nurse to remove posters from his locker at lunch time on the day in question, in the vestibule of the West Wing.

Allan Merriam

Biographic information on this individual is contained in the appendix to the West Wing incident. He became involved in this incident when called in by Officer Cater to assist in handling Inmate Nurse, when Inmate Nurse refused to leave the West Wing vestibule when put on charge.

Alexander Eadie

Correctional Officer at the Calgary Correctional Institute. In charge of the Guard Room on July 20, 1973, and became involved in the incident concerning Nurse when he was called from the West Wing by Officer Cater to come down and bring various forms of assistance.

William Murray Holland

Assistant recreation therapist at the Calgary Correctional Institute. Became involved in the incident on the day in question because he was standing at the Guard Room when the call for help for the West Wing came from Officer Cater.

Elmer Harvey Sealock

Correctional Officer 1, employed at the Institute since September, 1961. Duties are at Admittance Control. Became involved in the incident because on his way back to Admittance Control after lunch he was called into the Guard Room by Mr. Merriam.

Peter Ziachowski

Correctional Officer 1, became involved in the incident when he was coming off duty in the dining room and approaching the West Wing about 12:30, saw the incident going on there. Directed to go to the Guard Room and bring further assistance.

Simon Labrosse

Correctional Officer 1, employed at the Institute for ten years. Clerk, concerned with incentive pay and Alberta Healt Care Insurance. Became involved in the incident when walking back to his desk after lunch and met in the hallway by Mr. Merriam, who told him to go to the West Wing.

Inmates

Guy Lawrence Rooney

Biographic information for this inmate previously recorded in the West Wing appendix. Became involved in this incident because he was in the West Wing, having come back from dinner, and saw the discussion between Cater and Nurse in the West Wing vestibule.

Garry Verne Ramchuk

Biographic date on this inmate is within the appendix to the West Wing incident. Became involved in this incident because he was able to observe the altercation between Cater and Inmate Nurse in the West Wing vestibule from the area of his bed in the West Wing.

Gunther Cordes

Serving a sentence of two years less a day for possession of a narcotic. Involvement in the incident is a result of observing the altercation between Inmate Nurse and Cater as it developed, from the grill gate area of the West Wing.

Douglas Harold Petrie

Sentence of two years less a day for armed robbery. Involvement in the incident is observing Inmate Nurse and the guards as they fell out of the West Wing door on the day in question.

William Austin Kemp

Other biographical information on this inmate is available in the Summary of Evidence, West Wing Incident. Involvement in this incident develops from his presence in the West Wing area near the grill gate. Observed Cater and Nurse beginning to argue on the day of this incident.

Stephen Rottenbucher

Sentence of eighteen months for possession of a burglar tool. Housed in the East Wing. Saw events in the West Wing vestibule as he left the dining room, after having had lunch on the day in question.

Donald Hedrick Madsen

Now released. Inmate at the Institution on the day in question. Was serving conviction as a result of a drug offence. Was back in the West Wing on the day in question and observed the altercation between Cater and Nurse as it developed outside the West Wing grill gate.

SECTION 4.1.2 Testimony of Inmates: The Incident

Brian Dale Nurse (977-1006)

1. Cause of the Incident: The Wrist Beads, Locker Poster

Nurse was an inmate on July 20th, 1973, housed in the West Wing. At around noon of that day he was called to the cubicle. Arrives at the cubicle and Officer Cater shows him a sign taken off his locker and tells him it was not supposed to be there. The sign is about six by ten inches and on it it says: "Dr. John and B. Nurse, M.D.A.". The sign was attached to the outside of Nurse's locker "papered on". Nurse was unaware of a rule to the effect that no signs were to be hung on lockers, and after asking why the sign had to come down, was told by Cater that Cater just didn't want it there.

Nurse was then told by Cater to take the beads off his wrist. Unaware of any regulation against wearing beads. Nurse says "No" with regard to removal of beads. Cater says "Take those fucking beads off your wrist". Nurse says "No" again. Nurse states tha- he would take them off when he got back to his bed. Says that refusal to take off beads was related to lack of knowledge that it was against rules to wear them, and had had them for about four months. Did not want to take the beads off immediately, but at his bed, so he would not lose the beads when he cut them off. There were too man- to cut them off at the cubicle and put them in his pocket. Beads were sewed on and would have to be cut off. Says Cater said "You're not going to your bed, but you'll be going to the hole". Other guards were present at this time, Officer Woods and another person. Nurse states that he was not going to go to the hole, that he was going to stay where he was.

Nurse states that the beads would have been cut off after he arrived at his bed, with a razor blade supplied to him for shaving purposes. The nature of Merriam's questioning was: "Are you going, or do we have to take you down?" Nurse states he just continued trying to explain what the situation was, and stating that he wasn't going.

Nurse denies that he stated something to the effect that it would take more than ten men to get him to the "hole".

States the signs were put up above beds in Institution fairly frequently. He has been there six months. States that about forty percent of the inmates wore beads that are visible on their clothes all the time. Inmate Nurse did not actually advance the rationale pertaining to losing the beads if he cut them where he was, rather than at his bed, to Officer Cater. He does not advance an explanation for his failure to do so,

other than his preoccupation with the issue of going to the "hole".

2. The West Wing Lobby Fracas

Cater shuts the West Wing gate, they walk out of the cubicle area; he is toldto stand against the wall. Nurse reiterates his refusal to go because there is no reason. Cater phones Wood in the Guard Room and says "Bring more guards. Bring clubs and gas, too." Nurse hears this conversation between Cater and Woods. Between five and eight guards then arrive, including Mr. Merriam. Inmate Nurse d id not see clubs when that group of five to eight guards arrived from the Guard Room. He identifies A. D. W. Merriam, Officer Anaka and Officer Holland as in that group. There were between five and eight guards in the group.

He states that Cater hit him with his fist in his right eye and that he had not taken a swing at any of the guards prior to this blow. Nurse is 5' 6" and weights 135 pounds. Nurse advances the thesis that he was standing the wall during the incident that his hair was in his eyes and he went to brush it off and Cater jumped back. "I guess he figured I was going to take a swing at him, and he says he told me to go ahead and take a swing, because he would like that. And I said, 'I bet you would'".

When Cater hit him, he fell in a corner by the garbage cans. The other guards jump on him and beat him. Merriam sprays at his face with a spray can. He is dragged out into the hall and more beating. States that he was hit on the back of the head with a billy club. Nurse testifies: "I figured it was enough. I was going to the hole."

Sprayed in face with a spray can by A. D. W. Merriam after all of the officers jumped on him, subsequent to the blow of Cater, which knocked him down.

Nurse states that the gas would be about a foot from his face when it was sprayed at him and that the gas bothered him ofr about an hour after he was in the "hole". Also states that he had no clothes on when he was put into the "hole". States that the clothes were given back two or three hours later.

3. The Removal Down the Hall

Was dragged by arms and legs down the hall to the "hole". States that while in the hall he was beaten with fists, and that he felt a billy club on the back of his head, and does not know who was wielding it. He states that Merriam and Cater were supporting him, carrying him down into the "hole".

4. General

After staying in the "hole" overnight, and observation cell for one week, to Warden's Court, pleads not guilty for refusing a direct order, and is given a week's loss of privileges. Thereafter, since already in observation cell for one week, sent back to the Wing. Did not advise Warden Jackson in Warden's Court that he had been assaulted by guards. Figured the Warden knew about it.

Injuries were two black eyes and bruises on his chest and ribs, plus a cut lip; no medical attention sought for these injuries. Warden Jackson did not comment on them in Warden's Court. Father commented on injuries on visit two days after this incident.

Nurse states that he was brought to Warden's Court a Week after the incident, and that he still had black eyes at that time. Nurse states that he was on medication for epilepsy at the time of the incident. He thinks the name of the medication is "dilantin" and that he does not save them to get a high on them. Denies that the epilepsy is the result of glue-sniffing. Further questioning in this vein is not allowed, because it is a matter of expert opinion as to whether or not glue-sniffing produced brain damage in this individual, and the probationary report which produced this allegation in cross-examination is not of itself considered to be admissible by the Commissioner.

Nurse states that he did send a letter pertaining to this matter out to CKXL, and that they still have that letter, presumably.

Nurse refuses, and is advised by the Commissioner not to advise the Inquiry, which prisoner he had discussed matter of laying a charge with, in order to protect himself from retribution by other inmates.

Rationale for waiting two weeks to lay the charge, is that Inmate Nurse was afraid of what the guards might do.

Garry Vern Ramchuk (1039-1052)

1. The Cause of the Incident: The Locker Poster, The Wrist Beads

He states that most of the inmates had come back into the West Wing from eating their dinner. Cater had been searching lockers, or whatever, had a sign in his hand and had spoken to Brian Nurse and called him out. The grill gate was shut. He states that it appeared Nurse should not

have had the sign, and they shouldn't have had it. He states that Nurse and Cater were on the other side of the grill gate. States that after the sign conversation that Cater told Nurse to take the beads off his wrist, and that Nurse then said "I will take them off when I get back to my bed". He states that Cater then said: "You are not going back to your bed." The conversation went further. Cater said: "Take the beads off, or I will take them off." Nurse said: "Well, I don't know where I am going. I would like to know. I will take them off when I get back to my bed because I have got to cut them off."

2. The West Wing Lobby Fracas

Ramchuk states that after this conversation Nurse was on charge, that other guards came along and that a fight proceeded. He said he saw Nurse being beaten by the guards and taken out. He states that he never heard Nurse tell Cater he wasn't going to the "hole" and that he heard Cater tell him that's where he was going. He states that he saw a guard strike Nurse with a billy club; that he thinks it was Uterbyers. He states that Utebyers' build was slender, with short blond hair. He states that he would recognize Uterbyers, but does not know him personally. He said he saw four guards for certain during the scuffle, being Cater, A. D. W. Merriam, Uterbyers and Officer Holland.

He states that the billy-club blow he saw was in the direction of Nurse, but that he did not see Nurse get hit with it. He states that he saw Nurse get punched in the face and in the stomach in the scuffle but thereafter the five guards were standing around and he couldn't see everything that was going on.

Ramchuk states that he said: "Can't you stop this?" and "Is this necessary?", while standing at the grill gates watching the scuffle go on. He states that the inmates did not yell derogatory remarks to the effect: "Kick him in the nuts!", or words to this effect, while standing at the grill gate watching the fight.

He states that when the fight began he was up at the mirrors combing his hair, close enough to hear clearly what was going on prior to the fight. He states that he went back to his bed when told to leave the area by Mr. Cater, but returned to the grill gate when the fight started. He said he saw every moment of the fight, from the time the other guards came on the scene. He mentioned that at the time he was sitting on his bed, he might have missed part of the altercation.

3. The Removal Down the Hall

No effective view of these events, therefore no te stimony.

4. General

Ramchuk states that he was generally reluctant to get involved in the Inquiry, because he would "have no hope in the jail" after he did. This means "I just thought it would go hard on my doing any time". Ramchuk has six months to do yet. He expects that if he testified, he would have more "pressure" from the front staff, rather than the guards. The front staff are the Warden and the Deputy Wardens. That is, "I certainly feel they didn't want it to get out."

Ramchuk denies statements to this effect: "Hit him! Take him by the nuts!", made to egg Nurse on.

Ramchuk accedes to a question to the effect that Inmate Nurse is not known for violence at the Institution. He states that Nurse had black eyes at the time he came out of the "hole" and that Nurse stated this had happened at the time of the scuffle.

Gunther Cordes (1052-1060)

1. Cause of the Incident: The Locker Poster, The Wrist Beads

This inmate was within the West Wing, having had his lunch, at his bed, being Bed No. 51, close to Ramchuk's bed, in Bed No. 48, across the wall from Ramchuk. Hears Cater call Nurse out of the Wing, sees them arguing outside the grill gate. Hears Cater say something to Woods about getting the club and gas, and then hears Cater tell Nurse to wait right there. He states all the guards came back, asked Nurse if he was coming with them, and Nurse stated: "Well, not until I know why", but further states that he never heard anything amounting to an outright refusal.

He states that at least ten to twenty inmates were up along the grill gate watching the fight and yelling. He states that crude remarks might have been delivered, because there was a lot of noise, but that he did not say them or hear them. States that he was calling the guards "cowards" and also saying "Does it take five of you to take one 17-year-old kid?" and calling them "dogs". He also said that he stated "Is this what you call correction?"

States that he was aware of the ruling with regard to the posting of posters and pictures on lockers, and was aware of the fact they weren't supposed to be there. He states that quite a few of the inmates had pictures of families on their lockers. He states that as far as he knew posters were allowed to hang at the time in the Institution. Prior to this incident states that he was not aware there was anything wrong with wearing beads. A lot of the inmates wear beads. Beads are one of their hobbies. Many inmates wear beads around their neck.

2. The West Wing Lobby Fracas

Relates there was further conversation, then that Cater hit Inmate Nurse. He states that guards around Nurse included Cater, Merriam, Dennis Anaka, the social worker, Holland, and a couple of other guards. He states that he saw Nurse punched by Cater- and that then all the guards rushed in on Nurse. He states that Nurse was punched by Cater in the upper part of his body, and that Cater was between Nurse and this inmate's view. He states that the blow sent Nurse into the garbage cans. He said Nurse started struggling after all of the guards jumped on him.

He states that he did not see anybody hit Nurse with a billy club, but that he knew one or two of the guards had billy clubs. Recalls the blond-haired guard (he does not know his name), thinks he saw him with billy club, but is not sure.

States that he recalls Ramchuk coming up to the grill gates, and speaking to Woods about stopping this thing. Denies that he and Ramchuk were yelling encouragement to Nurse to the effect: "Kick him in the nuts!", etc.

3. The Removal Down the Hall

This inmate saw Inmate Nurse removed in the direction of the "hole" after the scuffle described above.

4. General

States that he saw Inmate Nurse about a week later when he came back to the Wing, and that he still had two black eyes.

Douglas Harold Petrie (1061-1066)

1. The Cause of the Incident: The Locker Posters, The Wrist Beads

This inmate did not see this aspect of the incident.

2. The Removal Down the Hall

This inmate was in the hall moving between the South and West Wing on his way to work. Saw Inmate Nurse and some guards "came ou and they fell, I guess, or one of them hit him. It could happen either way, I guess. And then they just picked him up and took him away." The fall described in the foregoing is at the entrance to the West Wing. The inmate saw these events when the group went on past the entrance towards the "hole". Petrie said the group that fell in the West Wing door were struggling as they came through, and that Nurse was trying to release himself from the guards holding him, and that it's possible that they all tripped at this point.

States there were four or five guards involved, and that he recognized three of them, Mr. Merriam, Mr. Anaka and Mr. Cater. Admits that he knows Mr. Anaka as a social worker.

This witness is not sure he saw any punches thrown at this point. He states that he did not see Nurse throw any punches at the guards. He states that he heard nothing but a lot of screaming and yelling,which he could not make out. He states that he was about fifty feet from these events. He states that Nurse was picked up and dragged away by each arm. He states that he couldn't see how Nurse was being treated as the group moved off down the hall, being out of his line of sight.

Thought Nurse was injured. His hair was all messed up. Cannot state whether he was bleeding, etc. This inmate admits under cross-examination that he had previously formed the conclusion that Inmate Nurse had been cut, although he did not see any blood. His conclusion was based on the fact that Nurse was "pretty messed up".

At the cross-examination, this inmate accedes to the statement that what he saw was "nothing other than just a bunch of people milling around".

William Austin Kemp (1067-1072)

1. The Cause of the Incident: The Locker Poster, The Wrist Beads

This inmate saw Nurse and Cater first when he was standing outside of the grill gate. He approached them to see what was happening. Heard Cater tell Nurse to take the beads off his wrist, and states that Nurse said "Okay, I'll take them off as soon as I get back to my bed". Cater's response: "You're not going back to your bed. You're going to the hole." Nurse then states: "I'm not going anywhere." Cater says: "Well, you are." Said Nurse then stated: "Well, I'm not going anywhere until I know where I'm going."

Relates that Cater then told Nurse he was going to the "hole" for refusing an order. Nurse states he didn't refuse a direct order and reiterates his willingness to take the beads off as soon as he got back to his bed. He states that he recalls hearing Nurse state words to this effect: "It would take more than you fellows to get me to the hole", during the period. States that Nurse gave as the reason for not removing the beads at the area adjacent to the control cubicle to this effect: "I don't want to take off these beads now because I will lose them", or words along this line. Inmate is sure that Nurse said this. He states that between fifty and seventy-five percent of the inmates wear beads.

2. The West Wing Lobby Fracas

Cater goes to the office, communicates with Woods. Moments later, five or six other officers arrive, Merriam included, and Merriam states: "Are you going to the hole peacefully, or are we going to have to take you?" Nurse refuses to go, states Cater throws a punch and hits him in the stomach at that point. States that Nurse's resistance from this point was just trying to hold himself "on the spot". After the punch from Cater states that Nurse fell into the garbage pails, the rest jumped in, and he saw Mr. Merriam use "this can of mace he had in his hand". States that the mace was shot into the area of Nurse's face.

States that by this time a half a dozen man ran to the grill gate "to try and get at the guards". At this time, of course, the grill gate was closed. He states that abusive hollering directed at the guards by the inmates was now occurring, calling guards "dogs", "pukes", etc. States that it's possible "Get him!" "Kick him in the nuts!" could have been said by someone but that he did not hear it and did not say it.

States that he did not see any of the guards strike Nurse with a billy club. States that he did not see any billy

clubs, that guards might have had them, but they would have been concealed. The only guards he is able to identify are Cater and Merriam.

States that at no time during the scuffle, particularly after he stumbled into the garbage cans, did Inmate Nurse hit the floor. States that when Nurse was carried out of the area north of the grill gate, still struggling, he was completely off the ground in a prone position, with someone hanging onto each leg and each arm. He states that this is the time at which the mace was squirted into the face of Inmate Nurse.

3. The Removal Down the Hall

States that he could hear Nurse screaming as the group went down the hall and states that the guards were beating him as they went down the hall. Describes hearing a very loud slap, and "there was no screaming of joy".

Stephen Rottenbucher (1076-1081)

1. The Cause of the Incident: The Locker Poster, The Wrist Beads

This inmate did not observe this aspect of the incident.

2. The West Wing Lobby Fracas

This inmate did not observe this aspect of the incident.

3. The Removal Down the Hall

This inmate first observed this incident when leaving the dining room to go back to the West Wing, being therefore in the hall. The first thing this inmate hears is a bunch of wrestling around the garbage cans. He states there were fists going towards the inmate from the guards around him, "a stick or something in the air, and a pair of cowboy boots flying around". He states that the cowboy boots

were kicking but missing, and of course being worn by someone. He states that there would be four to six guards in this group. He cannot identify any of the guards. He states that the garbage cans are inside the West Wing door in the "lobby" of the West Wing.

States that it wasn't an inmate who was the one with the cowboy boots. Inmates are not allowed to wear cowboy boots. States that he saw a stick in the area but cannot relate the use of the stick to any one person involved in the melee concerned.

Principally, evidence of this inmate is that there were arms and feet in the melee, but that he saw no specific punches. He states that the source of the commotion was resistance. States that he did not see the conclusion of the incident because he was told to leave by a custod ial officer.

States that the means of removal of the inmate involved in the scuffle was being dragged by the arms, with his lower body on the floor, on his knees. He states that he di not see any use of mace or tear gas.

4. General

Testimony of this inmate indicates that Inmate Nurse is a "radical" inmate. This means that "if somebody had been harping on him, he harps back to a further extent, like, he always wants the better of it". The inmate agrees with a leading question to the effect that at the time of this incident he believed that Inmate Nurse had a chip on his shoulder.

Donald Edward Madsen (1082-1085)

1. The Cause of the Incident: The Locker Poster, The Wrist Beads

The inmate is back in his bed after lunch on July 20th, notices a commotion at the front, leaves his bed and goes up to the grill gate to see what's going on.

States that he heard Cater tell Nurse to take the beads off his arm, and that Nurse indicated he would take them off when he got back to his bed, because he wanted to save the beads. States that Cater told Nurse he wasn't going

back to his bed, and that Nurse wanted to know why. States that Cater then phoned the Guard Room for help and that before the phone call was made, he does not recall Cater telling Nurse that he was going to the "hole".

2. The West Wing Lobby Fracas

Help arrives in the form of five or six guards, including Merriam and the Assistant Deputy Warden. Does not recall the names of the other guards. He states that in any event he told Nurse he was going to the "hole", Nurse said he couldn't see any reason to go and that he wouldn't go. This inmate definitely states that Nurse stated he wouldn't go willingly, that the guards would have to take him. Cater threw a punch, which he didn't see land. Nurse fell down among the garbage cans, the rest of the guards jump in, Nurse struggled, and that Nurse was then carried out the Wing and the door out of the Wing was shut.

This inmate did not see any gas used during the struggle. He did not see Nurse kick or strike Cater before Cater threw the blow referred to above. He saw no type of struggle or force prior to the blow allegedly thrown by Cater in the lobby of the West Wing. He saw no use of billy clubs on Inmate Nurse. This inmate states he did no hollering, but other inmates were hollering abuse, "dogs", "cowards" and "bastards", etc.

3. The Removal Down the Hall

This inmate did not see the removal of Inmate Nurse to the "hole".

4. General

States that he saw Inmate Nurse had black eyes the following Sunday when he saw him in the visiting room.

Guy Lawrence Rooney (1114-1119)

1. The Cause of the Incident: The Locker Poster, The Wrist Beads

This inmate returned from lunch, and sees Nurse by the guards' cubicle, with a number of officers around that

this inmate was not familiar with. He goes into the Wing, the gate closes. Sees Nurse in the corner, and states that "he fell on the floor". "There were guards hitting him."

He states that he heard some of the discussion between Nurse and the guards before the scuffle broke out, concerning something about a sign on his locker. He states that he heard nothing about beads on Nurse's wrist.

2. The West Wing Lobby Fracas

States that he saw guards hitting Nurse in the corner. States that Nurse was yelling and saying things. Cannot remember Nurse flinging arms or kicking or anything like that. Did not see any of the guards with clubs. States that he was standing about three or four feet from the grill gate to the West Wing. States that he saw no gas used on Inmate Nurse. Doesn't know which guards hit Nurse, as they were hitting him with their fists. States that he did not know the guards, only having been in the West Wing for three weeks. States that he saw a whole pile of guards and Nurse fall into a kind of confused jumble. States that he saw three or four guards in this melee. States that when Nurse went back into the corner, he was off his feet into a laundry pile. States that he was bodily carried out of the cubicle area after this point.

3. The Removal Down the Hall

No pertinent comment here.

4. General

State s that he saw Nurse in the Observation Cells in the C Range in a week or less after this incident. Saw that Nurse's eyes were dark at that time, but didn't see any other bruises or anything. STates that Nurse's eyes are pretty dark anyway. Saw no other facial bruises.

SECTION 4.1.3 Testimony of Custodial Staff: The Incident

Walter James Cater (1008-1038)

1. The Cause of the Incident: The Locker Poster, The Wrist Beads

States that he was in the West Wing at lunch time on July 20th, 1973, because a man was missing on roll call and he went to the West Wing to check and see if he was in his bed. Whilst in the Wing, passes Nurse's bed and notices a sign on his locker. This is contrary to a jail regulation dated February 7, 1973: "No photos, pictures of any type, are to be posted on walls or lockers. Family photos, post cards of a suitable nature would be allowed on display, not to be posted, taped, glued or stuck to walls or lockers in any manner. Any inmate defacing or violating this regulation will be placed on charge." States that this regulation was posted in the West Wing, and that he confirmed that the posted copy was still on place on the left-hand corner of the notice board in the West Wing on the day in question.

Three posters on the locker, one he took down had "Nurse B., M.A.D., S.T.P. and other junk" on it. States specifically the reason one of three signs was taken down was so that the Warden or the Assistant Deputy Warden could have seen where they were, and that therefore it could be proved that they were on the locker. Does not know if his word alone would have been taken. States, on cross-examination, that because drugs were in the jail, he had made an implication from the nature of the signs. The fact that the signs were a violation of regulations was the real reason for removing the sign.

Cater states that he thought this was poor, because it amounted to Nurse's advertising that he was handing out the drugs into the West Wing. Called Nurse into the cubicle and said: "Would you mind removing the rest of the posters?" States that Nurse replied: "No fucking way." At this point, Cater had removed one of the three posters, and stated that he just did this for illustrative purposes, and did not want to charge the man at all. Intention was to ask Nurse to take the rest down. States that when Nurse preceded him with one poster in his hand he said: "What are you doing with that one there?" "That's mine. That's my property." Cater made an allegation to Nurse, to the effect that it was known that he was the man to go and see about drugs in the West Wing. Nurse said "It's just a joke."

2. The West Wing Lobby Fracas

After Nurse's second refusal to remove the posters, Cater states that he had to put him on charge, and Nurse said "It will take ten of you fuckers to move me." At this time the two men were in the guard cubicle.

Cater put his arm around his back and indicated that they should go. Nurse swung his arm back and caught Cater on the chest. Cater then stated he would have to call for help and told Mr. Woods in the cubicle to do so. At this time inmates were still coming from the dining hall. Cater states he did not want a confrontation with those inmates too. Cater was standing outside of the grill gate on the cubicle side at this time with Nurse.

Cater then refers to a gesture of Nurse's which he took to mean he was going to punch him. Cater states: "If you want to, Nurse, you can." Cater waited for others to arrive and states he was still trying topersuade Nurse to go and take his punishment in the Meditation Cells. He stated that he was going to be charged with the pictures on the locker.

Cater got into the question of the beads when Inmate Nurse raised his fists or made a threatening gesture, after having refused to take the signs down. Cater relates that he perceived the beads on Nurse's wrist, informed Nurse it was contraband, told him to take the beads off. Nurse refused to take it off. Cater states that he told Nurse he did not want to charge him for that, and they would see what happened.

Then Officer Eadie and Officer Merriam and others arrived at the West Wing; Eadie stated to Nurse: "Will you come down quietly? You are on one charge now. Will you come down quietly?" Merriam having arrived then, stated that the whole thing would be forgotten "if you would take the band off", and Nurse refused to do so. Nurse repeated his remark to the effect that it would "take ten of you fuckers to get me down there". Cater goes on to state that he did not really want to charge Nurse for eh wrist band, because it was so stupid, but states that Nurse had become so obnoxious that there was nothing else that could be done, plus the fact that the fuss had attracted other inmates, who were directing remarks at Cater and encouragement at Nurse.

He states that as far as he is concerned, Nurse struck the first blow and that Nurse was dealt with sufficiently by the Warden, so that he felt no desire to make a charge in an outside Court in the nature of assault.

States that it was when he put his arm around Nurse's back to move him through the door when Nurse slammed his arm and caught him in the chest with his right arm. He called to Mr. Woods to call the Guard Room for some men with gas at this juncture. The majority of the inmates coming back from lunch were inside the grill gate at this time.

Cater states that when Woods made the call, that he had mentioned tear gas, but had not referred to clubs. States he could have "taken the fellow myself", but "after Nurse took a swing at me", he felt he had to have witnesses there. Feels he needs witnesses because this was three days after the July 17th incident, and the inmates were there egging Nurse on. Inmates doing this in particular, are identified as Kennedy, Cordes and Ramchuk.

Cater also states that he put his hand on Nurse's shoulder, and that right away someone came across "from the back with a billy club and caught my hand and his shoulder at the same time. I had a little bruise on my hand the next day, but it wasn't much to worry about." Cater states that he does not know who this was who did this, but that it must have been a Correctional officer. This time Nurse was no longer standing there but he was kicking and fighting before anyone went for him or tried to attack him. Cater states that just before the billy came down and hit him on the hand and on Nurse's shoulder, that he had placed his hand on Nurse's shoulder, that Nurse had started kicking and fighting and kicked him in the leg.

Cater then states that Mr. Merriam sprayed the tear gas, getting it on himself and Officer Eadie. This was ordinary spray tear gas, not in a billy club, and in the possession of Mr. Merriam. Cater states that at this point he grabbed Nurse's head, but the full effect of the gas then took place and that the next he remembers is flying on the floor with Nurse below him. Eadie was also on top of Cater and Cater was trying to get off Nurse. Cater states he is not sure whether or not he struck Nurse during this interval. He states that he could have been hitting one of his own officers because of the confusion caused by the tear gas. He said he cannot remember punching Nurse in the face. He states that he saw none of the other guards punch Nurse in the face.

In cater's opinion, there was no need for Nurse to b-gassed, or himself. States that the grill gate shut before Merriam got there. States that at this time there must have been more than three guards present, with all the prisoners behind the grill gate, except any prisoners who might have needed medication or other things. States that Nurse could have been subdued with a fight. States that two officers could have done this. States that he does not know what really

happened, because he got gassed and that he, Eadie and Nurse were pulled and jammed in the doorway and that all three of them went down. States that his hands were jammed down against Nurse's body when he fell. It therefore is not likely that he had struck Nurse in the face, because if he had his hands would have been in a higher position. States that if he had struck Nurse in the face he would have felt it on his fists for one thing. States that kick in the leg is his only injury.

States as well that there was no need for billy clubs either at this point. States could have leaned on Nurse's stomach, getting himself up off the floor when on top of Nurse. States that he would not have been hurt if hit by Nurse. States that Nurse did not throw a punch, that he swung his arm back and hit Cater in the chest. Cater states that he did not tell Nurse he was going to the "hole", that most likely Nurse would have gone to the cell block, owing to his medical circumstances.

3. The Removal Down the Hall

States that Eadie and Merriam took Nurse away to the Segregation Cells and that he and Woods stayed in the Wing. Felt this was necessary because the other inmates in the area, Casier, Ramchuk, et al, were "coaching" Nurse to keep on fighting.

4. General

States that inmates are generally brought to Warden's Court within twenty-four to forty-eight hours. States that Nurse's Warden's Court was three days later. States that he was not present. States that it is not always necessary for the man who places an inmate on charge to be present. States that gas can be used to stop a complete fight or calm kicking, struggling and fighting. Believes that a large number of guards can calm a struggling inmate more easily. Believes that gas used is not as potent as army tear gas. States that Nurse is 5' 6" and 135 pounds.

Allan Merriam (1092-1112)

Preliminary states that he was the officer in charge on the night of July 20th, 1973, and that Mr. Eadie was in charge of the Guard Room, that is, the Chief Guard. Was called

to the West Wing and told of trouble there. He got Officers Labrosse and Sealock to go with him, and he was handed a mini-streamer of gas at the Guard Room by Mr. Eadie. The mini-streamer would have been locked up in the Guard Room, under the control of Mr. Eadie, who is a C.O. 3, entitled to unlock the door and distribute things from the Guard Room.

1. The Cause of the Incident: The Locker Poster, The Wrist Beads

Merriam states that the grill gate to the West Wing was closed on his arrival in the West Wing lobby. Nurse was standing in the corner by the cubicle with Cater; Cater informed him of the situation, that is, the order to take the beads off, and that something improper was on his locker. States that at the time he arrived in the lobby of the West Wing prior to the fracas involved in removing Nurse, that Nurse did not state to him that he would take the beads off if allowed to do so at his bed, and that Cater did not advise him of a conversation to this effect having taken place between Cater and Nurse. He states that he himself told Nurse to remove the beads and that Nurse refused and that the other inmates in the Wing were getting "uptight" and that "by this time we had to get him out of there".

Merriam states that he asked Nurse to do as he was ordered and save himself a lot of trouble. He states that Mr. Woods was in the cubicle, and that Mr. Cater, Mr. Eadie and Mr. Labrosse were the other officers present in this area besides himself. With reference to the beads, he states that Nurse said: "If you want them, you fucking well take them off." He states that he then said to Nurse that he was on charge, that he was going to the cell block until seen by the Warden. He states that he also said: "you can go the easy way, or we will have to take you." Nurse's reply: "You fucking well take me."

2. The West Wing Lobby Fracas

States that Nurse then backed up in the corner, started to fight and kick; one officer got a kick in the shins; he was kicked himself, and that he gave Nurse a spray with a mini-streamer of gas to subdue him "and to stop him from getting hurt, and also other officers".

States that no officer hit Nurse before Nurse took any swings or kicks, that he could see. States that Eadie and Cater were the two officers who moved forward to grab Nurse to remove him. They were the only two who could get in there, because he was right in the corner. States that

Nurse continued struggling, and that when these two officers got him to the door, they all went forward and fell into the hallway.

States that the only person he saw with a billy club was Eadie, that it was in his pocket, because he was fighting with Nurse in order to attempt to subdue him. State s that this is the only time he saw a billy club. States that he did not see Eadie or Cater, the two men identified by him as the ones struggling with Nurse in the corner of the lobby, strike any blows to the body of Nurse.

States that Nurse was on his feet prior to their fall going through the West Wing door. States that Nurse had to be gotten out of there with dispatch because the other inmates were getting worked up. States that he saw only one billy club in Mr. Eadie's pocket. States that he saw no one struck with a billy club during the melee. States that he didn't see Mr. Cater get hit.

With regard to the struggle in the corner of the West Wing lobby, states that Nurse was fighting in the corner, that is, he was doing all of the fighting, and that two guards were simply trying to grab him. He states that he was about one foot from Nurse's face when he shot the mini-streamer at him. He states that the mini-streamer, so far as he knows, contains ordinary tear gas. States that Nurse kept on fighting after he was sprayed with the tear gas, right to the time that he went through the West Wing door and all fell on the floor.

Merriam states that evidence to the effect that he squirted Nurse whilst he was being carried out by his arms and legs and in a prone position was incorrect, that in fact Nurse was standing in the corner when he was squirted with tear gas.

3. The Removal Down the Hall

States that his own position was out in front of this group, which was falling through the West Wing door, waving at the South Wing, telling them to shut the security gates, because these events were transpiring right at meal time and men were coming out of the kitchen.

States that after the officers fell down going through the West Wing door with Nurse, that Eadie then got an arm lock on his left arm, that he held his right arm, and the two of them walked him down to the cell block. He states that Nurse, in response to a query at this point, stated that he wasn't going to give any more trouble. States that after he was gotten on his feet to be walked down to the cell block in this manner there was no more scuffling.

4. General

States that he did not see Nurse until the next time he was up for Warden's Court, and does not know exactly when that was. States that he was told that Nurse had been moved from the Segregation Cells to the Observation Cells. States that he had no involvement with that decision. States that the Observation Cells are on the same level, but that an officer is in front of them at all times to observe.

When shown Form of Violation, Correctional Institute Regulations, confirms indication thereupon the date of hearing on Nurse in Warden's Court was the 23rd of July, approximately three days after the incident. This is entered as Exhibit 53. Also shown the duty roster for July 20, 1973, being Exhibit 52, which shows that Officer Uterbyers was on the midnight to 8:00 a.m. shift July 20, 1973, Officer in Charge of the cell block, and states that Uterbyers would have been home sleeping when this incident occurred. A document called The Day Shift Work Sheet for July 20th, entered as Exhibit 52, also does not indicate Officer Uterbyers on duty on the day in question. This exhibit is acknowledged as being indicative of the state of affairs by Merriam.

States that he could not specify what the condition of Nurse's eyes was when he arrived in the West Wing, and that he had no cuts or scratches on him or bleeding at that time that he noticed. States that after the fall in the West Wing door, that Nurse was crying from the tear gas.

States that previously Nurse had been up on a suspicion of glue-sniffing on the weekend previous to these events, but that nothing had been proved. A plastic bag with glue was found after the inmates went in for lunch, but it could not be proved to be in Nurse's possession. Other than this incident, Merriam was aware of no aggressive behaviour or violent behaviour on the part of Nurse.

When questioned as to whether or not there was any general policy at the jail as "to when billy clubs, gas or brute force by guards will be used", this officer gives the following reply: "We treat each situation differently. We don't know what we are running into when we go into one of these wings when you are notified there is a disturbance."

Next question: "Is there any restriction or restraint placed upon you as a guard as to the use of gas or billy clubs?"

The answer: "We don't use gas that much. Very seldom. I have used it about three times in eleven years or four times in eleven years."

Next question: "Is that because of your discretion or because of --"

Answer: "Mostly we can talk them out of it and get them to go."

Next question: "Do you and the other guards, and perhaps the Warden, have discussions from time to time as to when these particular items will be used or when they will not be used?"

Answer: "No, sir. At our own discretion, sir."

Question: "Completely up to your own discretion?"

Answer: "If we have to use it."

States that this discretion is not granted to every class of officer within the jail, that only C.O. 2's and C.O. 3's in charge of the Guard Room can use gas (or, presumably, billies) at their discretion. Also, there is always an Assistant Deputy Warden and/or a C.O. 3 on duty, or at least there is supposed to be. States that this policy is laid d own by Edmonton. States therefore that the officers of rank lower than the foregoing would have to follow orders given by any of these persons, with a person in charge of the Guard Room.

Merriam states that he does not know whether or not tear gas will create a condition "similar to a black eye". He states that he has had a lot to do with tear gas, having instructed in the Army on tear gas at Camp Borden, and that he has seen men come out of a tear gas room rubbing their eyes.

When questioned with regard to courses pertaining to instruction in physical holdings to take a man, Merriam indicates that he thinks there is a course in Edmonton that all new Correctional Officers go on and he thinks the y are instructed in this area, but that he does not know if any of the officers involved in this incident had any such instruction. He states that he has had instruction in the Army in this area, but not as a Correctional Officer. He states that he just uses his own discretion. He states that he usually tries to get an arm lock on prisoners, that this is the best grip to get on them. Merriam does not object to the statement of the Commissioner to this effect: "I take it Correctional Officers have not been instructed how to obtain a hold, how to apply it or how to use it."

Merriam refuses to answer, and it is held by the Commissioner that he is not obliged to answer a hypothetical question posed to him pertaining to whether or not in the circumstances in which Cater asked Nurse to take the beads off and Nurse said he would at the bed, whether he would have considered Nurse's alleged position as reasonable or unreasonable.

Alexander Eadie (1120-1134)

1. The Cause of the Incident: The Locker Posters, The Wrist Beads

This officer was not present during this part of the discussion.

2. The West Wing Lobby Fracas

This officer comes to the West Wing with gas and extra help, in response to a request from a person he believes to be Cater. He called the staff lounge also for help. Merriam and Labrosse arrived, and Mr. Holland, at the Guard Room. Gives Merriam the gas at that point and all four of them head to the West Wing. When they arrive there, Woods is there and Cater is there. Cater and Nurse are standing against the North Wall of the West Wing lobby area.

States Cater told Merriam that Nurse had refused to move out of the Wing. A number of inmates were shouting and standing around by the grill gate, which separates the guards' cubicle from the dormitory. Merriam cautions Nurse that he had been charged by Cater and he would have to be removed to the cell block because he was on charge. States that Nurse then said: "If you want to take me out of here, you will need more fucking screws here." States that Merriam cautioned him again to be sensible and that Nurse replied with an obscenity. States that he himself cautioned Nurse that he was going to be moved. States that he said: "I will ask you twice to walk out of the Wing, and if you don't walk out after the second time I ask you, we will forcibly remove you, if we have to." Nurse replies again: "Fuck off."

States he then approached Nurse to grab him by the frong of his shirt. Nurse went to punch him in the face and he ducked down between his shoulder and pinned Nurse against

the wall by the stomach. He states he did not observe Cater punch Nurse at this time, or at any time. States that he did not observe any of the other guards punch Nurse in the stomach or solar plexus. States no billy clubs issued at the time he gave Merriam the mini-streamer at the Guard Room but that he had a billy club himself in his own pocket. He states that none of the other guard s had a billy club. He states that the billy club was in his pocket during the scuffle with Nurse and he did not strike Nurse with it. States that he saw no other guard strike Nurse or Cater with a billy club during the scuffle.

States that the swing that Nurse took at him was the first action involved in the incident; that he got a bear hug on Nurse thereafter. States that Nurse then went down and went up, the other guards became involved and he was taken out of the Wing into the main hall, where they went down again. During this interval, Nurse was swinging wildly and kicking. This officer was trying to obtain an armlock. Merriam then used the mini-streamer. States that he got some of the side effects from the mini-streamer. States that he got a lock on the left arm at this time because Nurse was covering his face and Merriam grabbed his right arm, and Nurse then submitted and quit kicking and struggling.

3. The Removal Down the Hall

This officer and Merriam then accompanied Nurse down to the "hole". This officer had him armlocked, and Merriam had a hold on his right arm. He states that he walked very quietly to the cell block. States that there was no further resistance from this point on.

States that he heard a lot of shouting from the inmates at the grill gate during the scuffle and a lot of obscenities. For example: "Go ahead, Brian, boy; put the fucking boots to the screws, show them you are not scared of them."

States that he thinks it was out in the hallway when Nurse was sprayed in the face with the aerosol can of mace, rather than within the lobby of the West Wing inside the grill gate.

This officer suggests that Nurse may have fallen to the floor with the officers attac hed to him at two points, shortly after this officer applied a bear hug to his body in the corner in the lobby of the West Wing, and also as the group tripped or fell as they were going out the West Wing doorway. This officer relates the spraying action to

the time that the group fell for the second time in or around the West Wing door, just out in the hallway. States that Nurse's eyes were not black when he first saw them in the corner of the West Wing. States that Nurse was not bleeding anywhere at this time and on out through the hallway he did not observe any bruising, swelling, cuts or bleeding on Nurse at all.

4. General

This officer did not see Nurse in the cell block after the incident, nor at Warden's Court later.

This officer states that he has had a course with the Calgary City Police on riot and crowd control, but no specific instruction as a jail guard as to when billy clubs or tear gas are to be used. Is aware of no policy at the jail as to what sort of situations these items should be used in. He states that it was his decision to put the billy club in his pocket, that Cater only requested gas and help in the form of other officers.

His course in crowd constrol was about three years ago. In that course they were shown a couple of holds. States he had some similar instruction in the armed forces in the United Kingdom, nothing in Canada. He states that instruction in the use of these holds would be of assistance to all officers.

William Murray Holland (1135-1140)

1. The Cause of the Incident: The Locker Posters, The Wrist Beads

Not involved in this aspect of the incident.

2. The West Wing Lobby Fracas

Standing in the Guard Room, waiting to go on duty at the time the call came from the West Wing to the effect that they needed more help. Proceeded there with Eadie, Labrosse and A. D. W. Merriam. Not issued with a billy club or weapon of any sort, believes Mr. Merriam had a small tear gas container and Mr. Eadie had a billy. States that none of the other guards had a billy at that time.

On arrival at the guards' cubicle, Cater standing outside of it in the West Wing lobby talking to Nurse. Woods is standing in the guards' cubicle, and he stands next to Cater as he tries to convince Nurse to take the beads off. He

states that he is getting a lot of static from Nurse at that time. Merriam comes up, speaks to Nurse in a similar vein, Nurse replies to him in a vulgar manner, also indicating he believes Nurse stated that he would take the beads off when he got back to his bed.

Then Merriam tells Nurse he is on charge and states: "You can either come the easy way, or the hard way." Nurse replies in a vulgar manner: "There isn't enough fucking screws around here to take me." Nurse then moves as if he is going to take a swing at Cater. Merriam then gives Nurse a short burst of the tear gas. Cater grabs one arm, there is a scuffle, they get him as far as the door going out of the West Wing into the hallway, where they all lost their balance and fell there.

He states that he did not see Mr. Cater punch Inmate Nurse, or any of the guards strike Mr. Nurse before Nurse was squirted with the tear gas. He did not see any guard use a billy club.

3. The Removal Down the Hall

States that after the group fell through the West Wing door, Nurse just got up off the floor; the door was closed, the group involved in the melee being by now out in the hall. This officer remained there to see if there was any more trouble and then went back to his regular duties at the gym. The only further problem in the West Wing was noise and hollering at the grill gate, and abusive language there.

Elmer Harvey Sealock (1140-1146)

1. The Cause of the Incident: The Locker Poster, The Wrist Beads

Not involved in this aspect of the incident.

2. The West Wing Lobby Fracas

On duty at Admittance Control of the jail, called at the Guard Room by Mr. Merriam, told of a rumpus in the West Wing, told to come with Merriam. Not issued with a weapon, gas or billy club at this time, and did not have a billy club during the incident.

Arrives and hears balance of conversation between Cater and Nurse to the effect that Nurse was asked to come with Cater. Nurse refused, abusive words follow, then states that Nurse made a motion as if he was going to hit Mr. Cater.

States that three guards crowded in to contain Nurse: Cater, Eadie and himself. States that at this juncture he helped to push Nurse back against the wall. He states that he did not observe Cater punch the inmate in the stomach or the solar plexus, and that he did not see Nurse punched in the face. He did not see Mr. Eadie strike the inmate.

States that during this interval his role was to get hold of Nurse's shirt and to put him out of the door of the West Wing. States that he did not see anyone on the staff use a mini-streamer on Nurse at this time. States that he did not smell any gas.

3. The Removal Down the Hall

After the group had gone through the West Wing door, and Nurse had been controlled outside in the hall, this officer states that he told Inmate staff in the kitchen changing shift coming out of the kitchen door, to get back to their jobs or the Wing, one or the other, and to get out of the hall area. At this juncture, this officer states that Nurse was under control when he left to go back to Admittance Control. He states that he did not see Mr. Merriam use the mini-streamer that he had with him.

States that he saw none of the guards strike Nurse. States that Nurse was kicking, cursing and swinging as much as he could until his arms were controlled.

Did not see Nurse after this incident.

4. General

This officer does not know whether A. D. W. Merriam actually grabbed hold of Inmate Nurse or not during the scuffle. States that the other two who moved in on Nurse in the corner of the West Wing lobby were Eadie and Cater.

Peter Zajakowski (1146-1152)

1. The Cause of the Incident: The Locker Poster, The Wrist Beads

Not present and not concerned with this aspect of the incident.

2. The West Wing Lobby Fracas

As coming off duty in the dining room at approximately 12:30 noon and approaching the West Wing, he sees a squabble: "down there", that is, in the West Wing. Cater says to him: "Zajakowski, you go down and get, go to the Guard Room and get Mr. Eadie to come up to the West Wing." And he states: "And that's what I done." This officer accompanies Eadie back into the West Wing, states that Eadie goes in first. Balance of his testimony indicates that the group came out with Nurse before he went in, and that he went into the control cubicle with Mr. Woods.

This officer's evidence is inconsistent and generall- difficult to comprehend.

Simon Labrosse (1152-1161)

1. The Cause of the Incident: The Locker Poster, The Wrist Beads

Not involved in this aspect of the incident.

2. The West Wing Lobby Fracas

This officer is a clerk at the Institution and becomes involved as walking back to desk after lunch, Merriam meets him in the hallway and says that they have to go to the West Wing, as there is a disturbance developing there. He turns around and follows Merriam. Issued with a gas billy type of weapon, with no gas in it. Shoved it in his pocket.

States that the reason he had the weapon is as follows: "Well, I had it, I presume that if I was going to be attacked I would have something to hit back with, instead of just my fingers, my hands." Relates a conversation between Cater and Nurse wherein Nurse refuses to take the beads off, in particular from Nurse: "I will not take these fucking things off." Relates Merriam's reiteration of Cater's position in this regard. States that Nurse again profanely refuses to take the beads off.

States that Nurse is finally told that he has to go to the "hole". States that Nurse then said in a profane manner: "It's going to take more than you Correction Officers to get me down to the hole", and that he is not going.

States that Merriam said "Okay, grab Nurse", and that when Eadie and Cater went forward to lay hands upon Nurse, Nurse stood back with his arms up, waiting for a fight. States that Nurse was kicking and fighting, they grabbed his arms, he went down. States that they picked him up from there and hauled him towards the door. States that he did not think that Cater was trying to punch Nurse, but he was trying to grab him. States that he did not see any blows land on Nurse. States that he did not see Nurse hit with a billy.

States that his billy was initially in his pocket but that he did take it out. States that he shoved it back into his pocket, because Nurse's arms had been secured and he was being carried towards the West Wing door. States that during the scuffle when the billy was out of his pocket, it was out of his pocket for approximately thirty seconds. States that he put it back into his pocket (on cross-examination) because he thought he was going to have to make a grab for a leg to help get Nurse through the door. This would be before Nurse went through the door.

States that he saw no blows struck on Nurse during this incident. States that Nurse was doing a lot of kicking but Correction Officers weren't kicking back. Doesn't remember any cowboy boots. States that at the "dark" cells, Nurse stripped his clothes voluntarily and was led into the cell. He states that at this point he went back to work.

3. The Removal Down the Hall

States that Nurse moved off his feet going through the door, tripped or was picked up or grabbed by the legs, and that he went back onto his feet as soon as he cleared the door, that there was no more trouble thereafter.

States that he saw Merriam give Nurse the squirt with the mini-streamer, reaching in when arms were flailing all over the place. States that the whole purpose was to subdue the man because there were a lot of inmates behind the grill and they could have had a lot of trouble. The sooner they got rid of Nurse, the better.

States that Merriam had a billy club, that is, the mini-streamer, or billy, which takes a gas charge. States his mini-streamer had no gas capsule in it. States that the object that Merriam had was a gas billy, not a canister.

Witness states definitively that Merriam had, at page 1161, an object like Exhibit 35, being a gas billy with a gas capsule in it, not a canister. He states he was glad he did not have a capsule in his gas billy, because he wouldn't have known how to use it. States that he does not know whether or not the difference between a gas billy and a canister is that with the former you cannot stop the spray once you start and with the latter you can.

Dennis Eli Anaka (1162)

This gentleman is a social worker at the Calgary Correctional Institute.

States that he was not involved in any kidn of an altercation which was the result of an endeavour to get Grian Nurse moved out of the West Wing around noon, July 20, 1973.

SECTION 5.1 FINDINGS OF FACT AND CONCLUSIONS: THE INCIDENT CONCERNING CONSUMPTION OF POISONOUS 'HOMEBREW' ALCOHOL

SECTION 5.1.1 Findings of Fact and Conclusions: The Incident Concerning Consumption of Poisonous 'Homebrew' Alcohol

1. The Commission finds that Inmates Gray, Bilsky, Cadieux and Poole were involved in the production of a form of 'homebrew' alcohol beverage, made up from a fermented mixture of tomato juice, yeast, sugar and warm water, contained in a plastic five-gallon milk bag, and consumed the bulk of this beverage between themselves, in a cell on the "B" Range of the Cell Block, at the Calgary Correctional Institute, on the afternoon and early evening of July 17th, 1973.

2. The Commission finds that the inmates concerned were designated as 'cleaners' at the date of the above events, and that this status facilitated the movement and communication required to manage the production of the 'homebrew' alcohol. The Commission finds that at the time of this incident, these inmates, being cleaners, also had access to a cleaning material, mint spray deodorant, which contained a toxic ingredient.

3. The Commission finds that as a result of an investigation of all of the persons who were classified as 'cleaners' on the day in question, in the form of an inmate interview at the Guard Room conducted by A. D. W. Merriam, it was determined that Inmates Poole, Bilsky, Gray and Cadieux had been consuming the alcoholic beverage, contrary to regulations. These inmates were then placed in the Segregation Cells and, subsequently, moved to the Foothills Hospital to be given medication to cause them to regurgitate. This decision was taken as a precautionary measure on the advice of the jail nurse. The Commission further finds that the Correctional staff were justified in assuming that toxic material had been used in the concoction, to disguise its odour.

4. The Commission finds that the testimony of Inmates Cadieux, Poole and Bilsky, and other pertinent elements of all the other testimony given, suggests clearly that each of these three inmates drank at least a pro-rata share of approximately three to four gallons of the 'homebrew'. As a consequence, all three of these inmates were heavily intoxicated at the time they were placed in Segregation at the beginning of the incident. The Commission further finds that Inmates Cadieux and Bilsky were ill in the Segregation Cells, prior to being removed to the Foothills Hospital. The Commission finds that Inmate Gray was not significantly impaired and that he drank a significantly smaller quantity of the 'homebrew' than did the other inmates concerned.

5. The Commission finds that all of the inmates referred to were able to walk to the Guard Room to be handcuffed, and thereafter to walk to the jail van and tnter the van, with the exception of Inmate Cadieux, who was transported to the Guard Room in a wheelchair and regurgitated during the journey.

6. The Commission finds that the inmates concerned were handcuffed at the Guard Room prior to being escorted to the jail van to be taken to the Foothills Hospital, that Inmates Bilsky and Poole were separately handcuffed, hands in front, and that Inmates Cadieux and Gray were handcuffed together, Gray's right hand to Cadieux's left hand, leaving one hand of each inmate free, because there were only three sets of handcuffs in the appropriate storage drawer at the Guard Room.

7. All four inmates walked to and entered the jail van at hand to take them to the hospital, voluntarily and without excessive difficulty, other than a certain unsteadiness due to the effects of the alcohol they had consumed. Officers Andrews and Attenborough were in the front of the van, Attenborough driving, and Cfficers Martens and Morrow were in the rear compartment of the van, seated among the inmates.

8. The Commission states that the Institute van was the type of van with a side-opening door, on the side of the van opposite the driver's side, windows on the sides, and benches along the sides and back. The testimony of the inmates and custodial officers who rode down to the hospital is not sufficiently detailed or accurate to establish reliably the exact position of each officer and inmate within the rear portion of the van on the way down to the hospital. The front and rear compartments of the Institute van were separated by a wire mesh.

9. The Commission finds that during the trip down to the Foothills HOspital, the inmates within the van directed foul and abusive language toward the officers in the van, and that they made speculative remarks as to the prospects of overwhelming the officers within the van, and the prospects of subsequent escape. The Commission finds that each of the four inmates participated in this verbal activity in differing degrees, which is referred to in greater detail in the attached precis of evidence herein.

10. On the arrival of the Institute van at the Foothills Hospital, Officer Andrews left the front passenger seat of the van to summon City Police officers Krauss and Johnston, already at hand at the hospital, to assist the custodial officers. During this interval Officer Attenborough left the driver's seat of the van and walked around to the passenger door side area, near the right-hand side exit door.

11. The Commission finds that by this point in time an altercation had broken out, as Officer Andrews opened the van's side door, with Constable Johston standing immediately adjacent. The altercation was precipitated by Inmate Bilsky, the first inmate to leave the van, as he left the van. In that respect, the Commission rejects the evidence of the inmates in the van, accepts the evidence of the custodial officers and police officers concerned, and finds that Inmate Bilsky was the first inmate out of the van, that he sprang out of the van quickly and aggressively, shouting abuse, and that he struck Constable Johnston of the City Police across the bridge of the nose with his handcuffs as he left the van.

12. The Commission accepts the testimony of Officer Andrews and Constable Johnston with regard to the balance of events concerning the bringing of Inmate Bilsky under control, and finds that Officer Andrews, Constable Johnston, and an unnamed hospital orderly brought Inmate Bilsky under control in a wrestling altercation which brought all of these persons to the ground, before Inmate Bilsky was successfully brought or carried into the hospital.

13. There is conflict between the evidence of the inmates and the evidence of the police officers and custodial staff as to whether or not Inmate Bilsky was struck with blows or punches whilst being subdued, and as to whether or not Inmate Bilsky was beaten with a pistol on the head by a police officer immediately after the altercation commenced with a blow to the face of Constable Johnston.

14. The Commission accepts the evidence of the custodial staff with regard to the question of blows and punches, and accepts the evidence of Constable Johnston with regard to the second question, that is, the Commission finds that the only time Constable Johnston's service pistol was out of his holster was when it fell out after Constable Johnston was knocked to the ground by the blow delivered by Inmate Bilsky. Further in this context, the Commission notes that Constable Krauss did not testify at this Inquiry, but finds that there was not positive allegation by any person involved in the incident that Constable Krauss removed his pistol from his holster and made use of it in any way at this time. Constable Johnston attested to the fact that he did not see Constable Krauss strike anyone with his gun during this time frame.

15. The Commission finds that Inmates Gray and Cadieux, being handcuffed together, exited from the Institute van after Inmate Bilsky, that Inmate Gray did not struggle or become significantly violent at this time; that Officer Martens restrained Inmate Cadieux and that Officer Attenborough assisted in this restraint at that time by gassing Inmate Cadieux with a "mini-streamer", thus expending the charge in that "mini-streamer" so that this officer could not carry on and gas Inmate Bilsky to further restrain him.

16. The Commission further finds that aside from the events referred to in the foregoing paragraph, the resistance of Inmates Gray and Cadieux during this interval was primarily verbal comment and abuse directed at the police and custodial officers bringing Inmate Bilsky under control, that blows were not struck by these inmates or custodial personnel as they were removed into the hospital, and that this group of persons did not wrestle or struggle to the extent that they all fell to the ground at this time.

17. The Commission finds that Inmate Poole exited from the van last, that he did not become involved in the altercation discussed above at all, and that he was forthwith escorted into the hospital by Officer Morrow.

18. The Commission states that a police dog was present during portions of the altercation at the hospital, under the control and direction of Police Constable Holmes, and finds that the dog was not used during the altercation and did not bite or attack any inmate or any person in any way at that time.

19. The Commission finds that when all of the inmates were successfully brought under control and taken into the hospital, further verbal abuse and obscenities were delivered by the inmates, that the inmates were then separated and the handcuffs removed, that vomiting to clear the 'homebrew' from their stomachs was induced by medication thereafter, and that the inmates were then handcuffed again to be taken back to the jail in a police van, which had arrived at the scene.

20. A. D. W. Merriam arrived at the hospital after the altercation had ended, and when the inmates had been removed into the hospital, and because of information he had received with regard to the outbreak of other events at the jail, had left the hospital before the rest of his staff. The Commission finds that in these circumstances City Police Sergeant Hibbert took effective command of the jail return operation, that he caused a police van to be provided to transport the inmates back to the jail, and that he gave instructions for the inmates to be handcuffed separately with their hands behind their backs, to forestall further attacks of the nature of the one delivered by Inmate Bilsky on Constable Johnston.

21. The Commission finds that there is a significant conflict in the testimony of Sergeant John Hibbert with regard to the mode of handcuffing, hands behind the back, of each inmate for the return to the jail, and the preponderance of testimony of all parties with regard to events of the jail, which indicates that several of the inmates left the police van with their hands handcuffed and raised in front of them.

22. The Commission states that this difficulty is capable of partial resolution by several means: Firstly, Sergeant Hibbert testified that he did not actually witness the handcuffing at the hospital, but only gave instructions as to th- proper mode. Secondly, Inmate Poole testified to the effect that he was handcuffed with his hands in front of him on leaving the hospital. Thirdly, Officer Morrow testified to the effect that Poole was handcuffed separately in front upon leaving the hospital. Fourthly, Inmate Cadieux indicated all of the inmates except Inmate Poole were handcuffed separately and behind.

23. Taking all of this evidence into consideration, and the consistency of all the evidence which indicates that Inmate Poole left the police van at the jail with his hands raised in front of him, the Commission finds that prior to being placed in the police van to be returned to the jail, Inmates Bilsky, Cadieux and Gray were handcuffed separately and behind, and that Inmate Poole was handcuffed separately and in front.

24. The Commission finds that during the trip back to the jail from the hospital in the police van, the police officers in the wagon were subjected to foul language and verbal abuse by the inmates in the van. The degree of participation of each inmate is indicated within the precis of evidence attached herein to these findings and conclusions.

25. At the time the police van arrived at the jail, Sergeant Hibbert came around to the rear area of the van and ordered the prisoners out. During this interval, the prisoners were then asked to come out, and Inmate Bilsky states that one of the prisoners shouted: "Come and fucking get us!" Thereafter, the prisoners did not come out immediately, but began to come out when Constable Holmes brought his police service dog closer to the rear entrance of the police van and the dog began to bark. The Commission find s that there were approximately twenty custodial officers and City policemen in the immediate area at this time.

26. The Commission states that the testimony given with regard to these events does not clearly indicate the exact sequence in which all of the four inmates came out of the police van, but makes the following findings with regard to

how each of the inmates was handled as they left the police van to enter the jail.

27. The Commission finds that Inmate Bilsky came out of the police van fighting and kicking, that he subsequently 'shrugged' off one of the guards who was holding him and thereafter attempted to get his handcuffs over the head of one of the guards, at which time Constable Holmes put the service do on Inmate Bilsky, whereupon the dog bit him in the thigh and right buttock. The Commission further finds that since the preponderance of the evidence suggests that Inmate Bilsky was initially handcuffed behind his back, that during the return trip to the Institution he was able to 'step through' the handcuffs, thus placing his hands in front of him.

28. The Commission finds that the dog was then removed off Inmate Bilsky by Constable Holmes, that Institute guards then wrestled Bilsky under control and that Inmate Bilsky then was escorted, or crawled, towards the jail door, at which time he was picked up by Officer Cater and brought inside the door, where Cater left him lying for the moment. The Commission finds that subsequently Inmate Bilsky was dragged by his arms down the hall past the Guard Room.

29. The Commission finds that Inmate Bilsky was moved from the Guard Room to the Segregation Cells by Officer Martens and A. D. W. Schlegel, each officer holding an arm. The Commission finds that during this phase Inmate Bilsky was not struck any blows, was on his feet and was bracing his feet against forward movement, and that Inmate Bilsky went down onto his knees as he was pushed into a Segregation Cell. The Commission finds that the handcuffs were removed from Inmate Bilsky shortly after the task of bringing all the inmates into the jail was concluded.

30. In making these findings, the Commission has rejected the testimony of Inmate Bilsky to the effect that he was pushed to the ground and prevented from walking into the jail, after having been bitten by the police dog, and has similarly rejected the evidence of Inmate Bilsky to the effect that he was dragged down the hall to the Guard Room by the hair, and that he was kicked repeatedly thereafter whilst lying in his Segregation Cell.

31. The Commission finds that Inmate Poole came out of the police van with his handcuffs raised in front of him, that he was handcuffed in front, as indicated previously, and that he then made a rush or lunge at Constable Holmes

and the police dog, with a view to striking the constable with his raised handcuffs. He struck Constable Holmes a grazing blow on the chest, the constable having leaned back. The dog was released, or of his own volition then attacked Inmate Poole and bit him under the right armpit, knocking Inmate Poole to the ground. Constable Holmes being off balance as a result of the backward lean and the forward momentum of the dog in attack, then busied himself with getting the dog off Poole at this point.

32. Simultaneously, other officers, principally Officer Addinall, brought Poole to his feet; Officer Addinall restrained Poole by holding him from behind, his arms under Poole's armpits, holding his handcuffed wrists to his chest, and marched Poole into the jail toward the Guard Room in lock step, chest to back.

33. The Commission finds that as Inmate Poole was taken through the main door of the jail in this manner by Officer Addinall, a billy club blow was delivered by another correctional officer standing in the area, to the inmate's right temple. The Commission states that the testimony provided makes it impossible to establish positively the identity of the person who delivered this blow.

34. The Commission finds that Inmate Poole struggled and resisted during these events, until he was deposited forcefully in an interview room by Officer Addinall. At that time, the Commission finds that Inmate Poole was interviewed by Warden Jackson with respect to aspects of the alcohol production, but declined to make a statement then because of his lack of confidence in his overall physical condition and capacity. The Commission finds that Inmate Poole was evidently suffering from the effects of the immediately preceding events at that time, but that he was lucid and capable of coherent speech during this interview.

35. The Commission finds that Inmate Poole was treated by the nurse for the cut above his eye and the bites, after the interview with Warden Jackson and in the company of Officer Merriam, and that he was subsequently put down in a cell.

36. In making the aforementioned findings, the Commission has rejected the evidence of Inmate Poole to the effect that he tripped and went to the ground as he was yanked out of the police van by a police officer and that he was, at that juncture, attacked by the police dog. The Commission finds that the dog attack was a consequence of Inmate Poole's having lunged at Constable Holmes, the dog's handler.

37. The Commission finds that Inmate Gray proceeded into the jail in a cooperative and non-violent manner and was subsequently, because of his known sensitivity to claustrophobia, at the direction of A. D. W. Merriam, placed in a cell within the Cell Block, and not in the isolation areas. The Commission further finds that if Inmate Gray was subjected to any exertion of force whatsoever, such means were restricted to a blow in the ribs of an undetermined nature and having his hair grabbed by Officer Williams as he stepped out of the police van.

38. The Commission find s that Inmate Cadieux went down to the ground as he came out of the police van and that his recollection of how this happened is uncertain, but further finds that he otherwise walked into the jail and toward the Guard Room without forceful restraint. The Commission finds that Inmate Cadieux was accompanied by Officer Martens and Officer Attenborough, each holding an arm during this journey. The Commission finds that Inmate Cadieux was dragging his feet at this time, but that he remained on his feet and that no blows were struck during this interval in order to further restrain him. The Commission finds that Inmate Cadieux's recollection of events at this time is hazy and uncertain, particularly with regard to the cause of the minor abrasions he states he sustained to his head. The Commission accepts the view of A. D. W. Schlegel as to the manner in which Inmate Cadieux was placed in the Segregation Cells. The Commission finds that Inmate Cadieux's handcuffs were removed shortly after these aspects of this incident came to an end and the inmates were all in the jail and safely under control.

SECTION 5.1.3 The Incident Concerning Consumption of Poisonous 'Homebrew' Alcohol

1. The Commission concludes that there was no excessive use of force during the entirety of this incident.

2. The Commission finds that the Correctional staff and police officers who were involved in this incident had to face brutal and aggressive attacks from inmates, whose behaviour generally was completely reckless, due to the effects of the alcoholic substance they had consumed. The Commission finds that in all of these circumstances, the custodial officers and police officials concerned exercised remarkable restraint.

SECTION 5.2 SUMMARY OF EVIDENCE: THE INCIDENT CONCERNING CONSUMPTION OF POISONOUS 'HOMEBREW' ALCOHOL

SECTION 5.2.1 Location of Witnesses, Background, Roles: The Incident Concerning Consumption of Poisonous 'Homebrew' Alcohol

Custodial Officers and Police Officers

James Alfred Morrow

No longer employed at the Institute. At the time of the incident a Correctional Officer 1. Became involved in the incident when summoned to the Guard Room and asked to escort inmates to the Foothills Hospital.

William Donald Andrews

Correctional Officer 1, employed in the Institute for nine years. Became involved in the incident when asked by A. D. W. Merriam to help escort four inmates down to the Foothills Hospital.

Walter Frank Martens

Correctional Officer 1, employed at the Institute for four years. Became involved in the incident when called into the Institute by Officer Cater to assist in removing the inmates concerned from the Segregation areas and taking them to the hospital. Proceeded to the hospital with the inmates.

James Bernard Cornish Attenborough

Correctional Officer 1, employed at the Institute for six years. Became involved in the incident and helped take inmates into the van to the Foothills Hospital.

Allan Merriam

Previous biographical data on this officer is contained in the record of other incidents. His involvement

in this incident began when he conducted the investigation to determine which of the inmates functioning as cleaners had drunk alcoholic beverages on the day in question.

Walter James Cater

Previous biographical data on this officer is contained in the summation of evidence of previous incidents herein. Became involved in this incident during the investigation as to the ingredients of the alcoholic 'homebrew' concocted by the inmates.

Constable Michael Stanley Johnston

Constable, Calgary City Police, became involved in this incident when requested by officers of the Calgary Correctional Institute to go to the Foothills Hospital to assist in handling inmates arriving there on the evening of the incident.

Sergeant John Hibbert

Sergeant, Calgary City Police, became involved in the incident on a basis similar to that of Constable Michael Stanley Johnston above.

Constable Edward James Holmes

Constable, Calgary City Police, became involved in the incident on a similar basis as the two foregoing officers. Responsible for handling the police dog present at the hospital, and subsequently taken out to the Calgary Correctional Institute after the incident at the hospital.

Thomas William Addinall

Correctional Officer 2, became involved in the incident when he was advised that the inmates were on their way back from the Foothills Hospital. Waited at the door of the Institute to assist in bringing in the inmates.

Inmates

Gerald William Poole

Serving a sentence of two years less a day for Welfare fraud. Became in this incident when he consumed the 'homebrew' beverage which had been concocted in the "B" Range of the Cell Block on the afternoon of the incident in question.

John Robert Gray

Now released from the Institution. Became involved in the incident in question through consumption of the alcoholic 'homebrew' created in the "B" Range of the Cell Block on the afternoon of the incident in question.

Dennis William Cadieux

Serving a sentence of one year for the possession of stolen property. Became involved in this incident on the same basis as the two inmates previously referred to above.

Michael Bilsky

Serving a sentence for a year and a half for escaping and for wilful damage. Became involved in this incident on the same basis as the three inmates previously referred to above.

John Alexander Schimmons

Became involved in this incident because he was located in the Segregation Cells when Inmate Poole and other inmates were brought down into this area at the conclusion of the incident involving events at the hospital.

SECTION 5.2.2 Testimony of Inmates: The Incident Concerning Consumption of Poisonous Alcohol, Being Charged

Gerald William Poole (1172-1225)

1. July 17, 1973: Production and Consumption of 'Homebrew'

This inmate housed on the B Range of the Cell Block, Cell No. 2, on the day in question. States Inmates Gray, Bilsky and Cadieux were located in "cleaner's cells around Numbers 7, 8 and 9". They were all beside each other, and this inmate was down from them on the same side. This inmate drank 'homebrew' made out of tomato juice, yeast, sugar and warm water, mixed in a plastic milk bag, around 6:00 p.m. on the day in question. Inmate states that he wasn't affected in any particular way. Does not know how the consumption of alcohol on his part came to the attention of the Assistant Deputy Warden, but somebody must have suspected it. This inmate was taken down to the Segregation Cells about fifteen minutes after Inmate Bilsky was taken, being told that the reason why was that he had been drinking.

States that the brew is moved around from cell to cell whilst it was being made, and that it was in his own cell for about one day. Will not say whose other cells it was in, because he is afraid to implicate other inmates. Is not required to do so. Took part in the making of the brew and knows what mint spray is, that it is used at the Institution, and none wasput in this brew. The brew did not taste or smell of mint spray. He was a cleaner at this time; Cadieux, Gray and Bilsky were all cleaners as well. They all had access to mint spray. Since this incident he has no longer had access to mint spray. During the entire incident he never told anyone that he had put mint spray in the brew. To his knowledge, no one else made such a statement. States that Cater and three or four other men came down to the Segregation Cells before the group was removed to the Foothills Hospital, with a bottle of mint spray, a bottle of turpentine and a round disk of deodorizer, and stated: "It's none of those articles." States that he then said: "It's none of those articles." States this indicated the concern of the officers that there was something else in the 'homebrew'. The alcohol that was drunk was drunk in cups and this is how he measured his consumption. The balance of the brew was poured down the toilet because the inmates became aware of the fact that it had been found out that there was a brew made in the block.

States that the officials of the Institute felt they had all poisoned themselves, but he did not feel that way. He has had a number of experiences with 'homebrew' of this nature before. He has been drunk on the same solution before. Drank three pints on that occasion.

States that all the ingredients were tomato juice, yeast, sugar, warm water, and that no flavouring or mint spray was placed in this brew. He had control of the batch at all times. It took approximately two hours to drink the batch. States also that he drank four pints, having previously stated that he drank a half gallon. When he left the cell at the jail to go to the hospital he was having a little trouble walking. States that his speech was slurry and impaired. States that his memory is sometimes a little hazy about what happened on that particular evening, perhaps up to the time he was given the emetic at the hospital. States that the effects of the alcohol finally wore off on the morning of July 18th. Bilsky was not physically ill from it in the cell before they went to the hospital from the jail. Bilsky and Cadieux drank about a gallon of the brew each. States that he was able to talk to them in the Segregation Cells before and was having no difficulty understanding them. At that time Bilsky, Cadieux and John Gray didn't seem to have any difficulty walking. States that he had to sit down. States that their speech was slurred.

States that the whole of the brew had been four gallons, one gallon having been poured down the toilet, making a total of approximately three gallons drunk between Bilsky, Cadieux, Gray and this inmate. They all drank it together. They were all four together in one cell. The bag that the brew was made in was a five-gallon bag and it was half full. At this point in this evidence, he states again that he drank half a gallon and that the others each drank the same amount, which makes two gallons. This testimony indicates he is very vague about this aspect of the evening. The others had drunk a gallon each. States that the brew took approximately three days to develop. States that he drank less 'homebrew' than the others because it wasn't his to begin with.

2. The Removal to Hospital

Bilsky, Cadieux and Gray were already in the "hole" when he got there. The inmates slept and were sick to their stomachs, probably Cadieux and Bilsky. Half an hour later, guards came and told inmates they were going to be taken down to have their stomachs pumped. Group was released from the cell, taken to the Guard Room, handcuffed, placed in the staff vehicle and taken down to the Foothills Hospital. Each had a

set of handcuffs on individually, with handcuffs put on in front. Four guards in the truck on the way down, Andrews, Morrow and two others this inmate does not know. No discussion on way down, except questions of inmates: "Where are we going?", etc. The van they travelled in down to the hospital had windows in the sides, but "everybody was facing the driver; but there were side seats; you see, nobody was sitting on the side seats, except two". The panel truck used has benches along either side, and doors that open at the outside, near the back, at the entrance to the truck. This inmate was seated at the rear of the truck, an officer was beside him to his right, and the other prisoners were ahead of him. "They got out, naturally, first from the side of the truck." He himself did not swear at the guards on the way to the hospital, but states he heard inmates say to the guards that they were "fucking pigs" and "cocksuckers", on the way in from the jail to the hospital. States he heard no remarks with regard to escape if handcuffs were removed, attacking the guards once they got outside the vehicle, and states that he did not notice anybody's condition worsen on the way to the hospital. States that no one was sick in the truck.

3. The Incident at the HOspital

On arrival at the hospital the doors were opened from the outside of the van. Either Bilsky or Cadieux got out first. He did not see anybody struck in the face with a pair of handcuffs by one of the inmates as they got out. Everybody exited from the side; he was looking in the direction of the open door when everybody was getting out. The testimony of the inmate at this point indicates that he saw a scuffle start at this juncture and that it was started by an inmate, that he refuses to say which inmate it was. States that this man was hitting a police officer in the face with his handcuffs. States at this point in his evidence that what he had told the Inquiry previously in this respect was untrue. Some indication in the inmate's testimony at this point that this inconsistency may be related to the desire not to disclose names which would incriminate fellow inmates. States he was the last one out of the truck. He proceeded into hospital; didn't get involved in the fight whatsoever. Was escorted into the hospital by Officer Morrow.

By the time he got out of the truck, the scuffle was already in progress. Estimates six guards and police officers in the area during the time the scuffle was in progress. States that all the inmates were handcuffed during the scuffle. States he did not see any gas used and did not smell any at this time. The scuffle was off to the left of

him. Didn't see how the fight started. He saw an officer pulling on somebody; fists were flying through the air, and his friends were involved, that is, Bilsky and Cadieux. In his opinion, Gray was not involved. The police were involved in the scuffle. There was a dog, or dogs, present at the Foothills Hospital, but he was not attacked at that time. States that someone else was attacked and was bitten.

He was taken inside, placed on a table, handcuffs on, and given something by a nurse to make him sick. States that when he was given something to make him sick at the hospital that he vomited and lost everything that had been in his stomach which he had ingested from the supper of that dat. States he was all right when he got back into the van to go to the Institute, but was feeling a little bit weak. States that he felt fine on the way down to the hospital, but started to feel bad when he was in there. States that he was in the hospital for two and one-half hours, and did not see Bilsky, Gray and Cadieux until they left the hospital, being placed in the police van for that purpose. States Merriam came by to see how he was. States that he was handcuffed with his hands in front of him on leaving the hospital. States the four inmates were placed in the van. States each was handcuffed singly. Recalls a Sgt. Hibbert was in the van, but cannot identify other police officers. There were two in the van. They returned to the Institute in the van.

4. The Incident Upon Returning to the Jail

Recalls no threats or suggestions regarding escape on the way out to the jail. Recalls no discussion on the way out at all. Confirms Exhibit 4 as demonstrating the front entrance of the Calgary Institute, where the prisoners were taken back into the jail. When the van arrived at the Institution, states that he could see a circle of police and guards, with the guards changing shift. Or, it looked like they were waiting for them. States that this group was about 100 people.

The van stops in front of the jail. A sergeant or someone came around to open the door, asked them to get out. They got out the back. As this inmate approached the door, he was yanked out of the van by some sergeant or officer of the police. States he tripped and went to the ground, a dog grabbed him and he got up to protect himself from the dog. This was an attack dog from the Police Department. States the dog attacked him when he started to rise after tripping and was standing right beside the policeman when he got up. States he grabbed a raincoat, and that's all he remembers. The dog was biting him at this time on his chest, where the

skin was broken and where bleeding occurred, and there is a scar there. Later on in the jail he gets a shot for tetanus and is bandaged by the Institution nurse. Does not recall the police officer saying anything to the dog to go and get the prisoner before the dog attacked him. Never heard the police officer telling the dog to quit, either.

States that Cater, Andrews and Morrow were present and observing these events. States that he saw Merriam only in the Guard Room later. Thinks that it was a police raincoat he grabbed. States that as he grabbed the raincoat he was hit with a blunt instrument, a flashlight, on the right side of his temple. States it was Cater who struck him. He fell to the ground after this, and was grabbed again by Officer Addinall, who grabbed him by the arms, twisted his shoulder around, threw him to the stairs and pushed him all the way down the hall right into the Guard Room office. The blow from Officer Cater was in front of the prison.

Recalls being thrown into the Guard Room office by Addinall and looking up into the Warden's face. States that Warden Jackson asked him if he wished to make a statement, and he didn't understand the question and refused to make one: "I can't at this time, because I don't know what I'm saying." States that the flashlight blow gave him a cut and that he was bleeding. States that the nurse bandaged it, no stitches needed. Also, was treated at the Medical Inspection Room for his other injury, namely, the dog bits. He was then taken down to Segregation. Schlegel, Marrian and Cater and two other officers took him down there.

States that he was struck with a fist on the way down by Cater or somebody else on the side of his face. He was offering no resistance prior to being struck. States that he was walking and fell or was pushed into a cell. The blow from Cater with his fist was right in the Segregation area, just before he went into the cell. Handcuffs had been removed in the Guard Room upstairs piror to all of this before the inmate spoke to the Warden. He was taken into the Cell Block area by Merriam, Schlegel and Cater et al. The other inmates were already down in the Segregation area, that is, Cadieux and Bilsky. The evening ended for this inmate when he stumbled onto the bed in the Segregation cell. States that Cater was behind him when he struck him with his fist. States it did not do any damage, but he did touch him. States that he had been pushed and shoved along all the way down to the medical room.

States that it is a possibility that he was still under the influence of the 'homebrew' that he drunk that night.

Felt that the 'homebrew' had some effect, but he was not poisoned. States that the 'homebrew' could have made him feel sick in the hospital. States that he had consumed half a gallon of the stuff. States that after being sick at the hospital, on his way back to the Institute, he was not unsteady on his feet in any way as a result of having drunk the 'homebrew'.

John Robert Gray (1129-1167)

1. The Production and Consumption of 'Homebrew" Alcohol, Being Charged.

This inmate housed in B level of the Cell Block on the 8th of July, 1973, consumed a beverage with other inmates in which he knew there was tomato juice, yeast, water and sugar, which had been sitting around fermenting for some time. States he didn't like the taste of it so he only had about a bowl and a half. States that it had a small effect: "Just warmed the brain, but nothing serious." States that he was not drunk. States he is not really sure who made the brew, that he was a cleaner at the time the brew was made, that he did not have access to mint spray, but he thought it was a deodorant. Heard about the mint spray after the incident but not on the night in question. Heard about it from Mr. Merriam.

States that he was told that the 'homebrew' was made in a plastic bag, and that he only saw one pitcher full when he first went in there, that it was a quarter full when he arrived, some was drunk and that it was filled again. Feels that he was apprehended at the time the alcohol was being drunk because it was only the cleaners that were out of their cells. They simply called on all the cleaners.

The brew had been poured from a plastic bag when it was brewed into silver gallon pitchers, but he cannot state what the total amount of brew made would be, because drinking was going on before he came into the cell. States that he left the cell to play cards elsewhere because he didn't like the taste of the brew. The others stayed and were still drinking when he left. Merriam never specified to him what ingredient in the brew might have been poisonous. He did not want to to to the hospital, because he felt there was nothing the matter with him, and then ultimately decided to go because "I thought it was a good idea to go for a ride", having been in jail for a few months. The amount of 'homebrew' he consumed was enought to give him a "buzz" or a "glow on".

Drank a bowl and a half. A bowl is about ten ounces. States that he was able to play cards after drinking the 'homebrew', was walking and talking normally. States that no one told him his speech was slurred. This inmate is unaware of brew that was dumped in the toilet; states he didn't like the 'homebrew' because it had a real bitter taste, and that he had never had something like this before. He did not stay in the cell where the brew was available for long, left after a short period and then played cards, therefore did not see the brew finished off.

After they had been in the cell drinking, states a guard told them to go to the Guard Room, where Merriam asked what he had been drinking. He didn't answer. Merriam smells his breath and states: "You are on charge for drinking." States he had to go to the "hole". States he won't go because he has claustrophobia, and that they would have to drag him there. Cater has been watching from the hallway and Cater and Merriam decide that he is supposed to go to the A West section of the Cell Block which is, of course, more open that the "hole" area.

2. The Removal to the Hospital

After being in the cell for an hour, guard opens the gate and tells him to go to the Guard Room, which he does. Merriam is there and tells him he is going to the hospital because they figure the alcohol may have been poisoned. States that Bilsky, Cadieux and Poole were at the Guard Room when he arrived. By this time he was back to normal and he states because he had not had that much to drink in the first place.

States that he was handcuffed to Cadieux, that Cadieux was fairly drunk, having trouble walking, and was staggering, and that his speech was slurred. States that Cadieux and Poole were in about the same condition; that Bilsky was the drunker of the three. States that he was by ar in the best shape. Poole and Bilsky were cuffed separately. States that they were then taken out to the van, proceeded to drive to the hospital. States that on the way down they were "mouthing off a little about the inmates and the guards in the jail in general" States they never had a chance to escape. States that the discussion with other prisoners which the guards could have overheard pertained to the fact that the prisoners could have overwhelmed the guards if they had wanted to.

He states that Bilsky was drunk and that Cadieux was drunk but Cadieux was not as drunk as Bilsky. States that Poole was about as drunk as Cadieux. In other words, Bilsky was the drunkest.

States that the conversation on the way to the Foothills Hospital was more amongst themselves than directed at the guards, but that the guards could overhear. Lots of foul language used. States that the use of foul language at the hospital was used in a protective way, this being as a lesser evil than using their fists or boots. States that he does not use fists or boots "unless I've got the winning advantage, but when there is a lot of police and officers, I don't have too much".

On the ride down to the hospital, says that "we", that is, the three prisoners, said words to this effect: "Look at this, they are sending us with three guards. If we wanted to escape, there would be no problem, because we could take them." States this was said in the presence of the guards. Told the one guard who was in the back part of the van with him, and the other two were in the front part of the vehicle. Areas of the van are divided with a wire mesh; they could be heard up front.

3. The Incident at the Hospital

At the time Bilsky was scuffling with police officers on their arrival at the Foothills Hospital, he and Cadieux were grabbed by the arms and more or less forced in the hospital doors. Cadieux did not jump a police officer at this time and knock him to the ground. If this were the case, he would have been on the ground as well, being cuffed to Cadieux. Cadieux could not have struck anybody because three handcuff sets were involved, one on each of these persons and one holding them together. This inmate was handcuffed, his right to Cadieux's left. He states that a blow cannot be delivered because fist coordination can't be done in this position.

States the van pulled up to the Foothills Hospital, wasn't expecting anything, but states that the next thing they knew after they got out of the van he looked up and there was "one of the City Police -- he was using the butt of his gun on Bilsky, trying to subdue him". Did not see what happened between Bilsky and the police officer before Bilsky was struck with the handle part of the officer's gun. States that Bilsky, at the time of these blows, was "just sort of slumped over". Under persistent questioning, this inmate indicates he was not watching, did not see, was not paying attention, between the time the van got to the hospital and the time he got out of the van, looked up and saw a police officer using the butt of his gun on Bilsky.

Saw no one get struck with a handcuff around him or Cadieux. States that he did not strike any of the police officers, was not struck by them, but was dragged and shoved. He was not really resisting at the time he was sprayed but was "trying to pull away" just for his own safety. That is whatever resistance there was on his part, related to protecting himself. This inmate states affirmatively that he and Cadieux did not fall on the ground with a police officer or police officers at the hospital.

He and Cadieux started mouthing off "police brutality" and this sort of thing, and then were grabbed by the arms and were sort of dragged towards the hospital entrance, getting sprayed with tear gas or mace at this time. States he was not sure who did this, whether it was a guard or a police officer. States no police officers ever struck himself, Cadieux or Poole at the Foothills Hospital.

They then go to the main desk in the Emergency Ward and an orderly or nurse gives them medicine to make them sick. Firstly the two refuse the medicine, then they are each led into a room after Merriam undoes the handcuffs, and at this point he takes the drug to make himself sick. Cadieux off to another room. He was at the hospital appriximately forty minutes. States that he never felt sick until he got the medicine in the hospital. States that the medicine at the hospital was not forced on them. States he felt there was a possibility there might have been some poison in the brew. States that he would "rather drink it than die". States that "if you mix yeast with any kind of liquid and if you leave it too long, it could have poison of some kind."

He was taken back from the hospital to the jail in the police van with two policemen in it, and that they were all handcuffed separately at this time, with their hands behind them. With regard to the trip home in the police van: "We were all uptight about the events that happened and we continued on down to the jail, and we were just talking between us and yelling at the police officers that were driving." States that the remarks directed towards the police related to a show of brutality merely because they were drunk and inmates. States that Bilsky had a sore head which he was complaining about. States that there is no indication whether this was from the 'homebrew' or the gun butt. States that there were no visible marks or injuries on any of the inmates.

4. The Incident Upon Returning to the Jail

Arrived at the front door of the jail and observed a bunch of police officers and a bunch of inmates. States that there were approximately eighteen to twenty altogether. States he knew "we were in trouble, because all of the officers were out of the jail", that Cadieux got out of the van first and that he never saw him after that, that then Bilsky got out and that he did not see him for three or four minutes. He indicates the prisoners in the van going back to the jail intended to voice some objection to the treatment they had received, until they saw the large number of officers waiting for them when they got back to the jail. They were all afraid when they got back to the Institution, but no one tried to break loose and get away when they got out of the van.

States that just as he got out of the van, Mr. Williams, an Institute guard, grabbed him by the back of the hair, then Cater gave him a jab in the ribs, and that he went down and got one across the back of his neck. States that the rib jab from Cater was from a flashlight. He thinks it was a flashlight, but "I can't say for sure". On cross-examination, inmate admits that the blow he was struck with getting out of the van on arrival back at the jail could have been a hand or an elbow, but thinks it was a flashlight. States that there was an object in the hands that struck him. On further cross-examination, this inmate re-affirms his belief with regard to being hit: "I know I got struck in the chest." He also states that Guard Williams grabbed him by the hair because all the guards were uptight about what was going on. States his hands were behind his back at this time. He saw nothing and nothing was said to him as he got out of the truck. The blows did not knock him to the ground, because the guards had grabbed him by the back of the hair at the same time, that is, he was being held up by his hair.

While all of this was going on, he looked up and saw Poole get out, saw two of the guards grab him, saw someone give him a punch in the face (Poole did not fall down at this time), and then he saw him dragged off. He cannot say who struck Poole in the face, that he was hazy after he got struck in the neck and the ribs. He cannot say whether it was a police officer or a guard who hit Poole in the face as he got out of the van. He couldn't say whether the fellow who struck Poole had anything in his hand.

While he was being taken back into the Institution, Officer Williams still had him by his hair; he was sort of stunned, he was grabbed by the arm, and all of this happened just outside the front door. Does not know who had him by

the arm on the way into the jail. As he was going into the jail, he saw Bilsky lying on the floor "with a dog a few feet away from him, with some guys dragging him by the back of his hair across the floor". The dog was in the Institute. He did notice the dog before he got out of the van and he saw two dogs, or he is pretty sure there were two dogs. States that he saw one dog when they got out of the van, and then another in the Institution, and that this might have been the same dog, that it had only moved. States that he did not see the dog attack anybody.

States that Bilsky was lying on the floor in the jail when you walk in, where there are a couple of stairs, a flat part on the floor. Inmate Bilsky was being dragged along the floor by the back of his hair and he was mostly on his stomach. States that he does not know who was dragging him, and that he was more worried about himself at this time. They started to take him to the Segregation Cells. They stopped for a minute at the Guard Room. He was put on charge for drinking intoxicants at the Institution as a result of this incident and was not charged with anything else. States that he was being taken down to Segregation, but Merriam yelled to whoever was taking him down about his claustrophobia, and told that person to take him to the Cell Block, which is where he was taken. He received no other hits or any other force, other than those received after he got out of the van on this night. States that Bilsky, Cadieux and Poole did not come to the Cell Block.

Dennis William Cadieux

1. The Production and Consumption of 'Homebrew' Alcohol

In the Cell Block on July 17, 1973, consumed a 'homebrew' made out of tomato juice, states that he was fairly drunk as a result, that the others were in about the same state; unable to tell who was the drunkest after consuming the stuff. The gallon and a half he drank would have been consumed over approximately two to two and a half hours. Called down to the Guard Room after consumption of stuff, can't remember whether other three were there; remembers he was there, talked to Merriam there; Merriam asked if he had been drinking. Stated "Yes", and told Merriam what he had been drinking.

At this point in his testimony, the witness, since he is facing charges in this case, asks for the protection of the Canada Evidence Act and obtains it. After admitting to drinking, at the Guard Room, he, Bilsky, and Poole were sent off to the 'hole". About an hour later the doors open

up, because they're going to the hospital because they had apparently drunk some poison. Cadieux is taken to the Guard Room in a wheelchair because he couldn't stand up, being so drunk. He states that he had drunk about a gallon and a half out of the pitcher. States again that at the time he was taken to the hospital he was so under the influence he couldn't walk. At the Guard Room, handcuffed, taken outside, put in the panel wagon and escorted to the Foothills Hospital. States he saw Bilsky, Poole and Gray at the Guard Room, that Bilsky, Poole and himself were in pretty bad shape, that John Gray was not that drunk. States that Michael Bilsky was handcuffed alone, Poole was handcuffed alone, and he and Gray were handcuffed together. States that three sets of handcuffs were used on Gray and himself, one on each of them, and one holding them together.

2. The Removal to Hospital

Doesn't even remember coming up from the 'hole" in a wheelchair to the Guard Room at the time they left the Institution; apparently came awake in the wheelchair on the way to the Guard Room. Too drunk to walk. States that he had been sick whilst he was in the "hole". States he was also sick while being brought up on the wheelchair. States he walked from the Guard Room to the van taking them to the hospital. States he was handcuffed to Gray at this time.

States that Andrews and Morrow were in the van, but he does not know if there was anybody in the back of the van with them. On the way down to the hospital, one of the four inmates said something to the effect that if the handcuffs were off they could take the guards and escape. He doesn't know who it was.

3. The Incident at the Hospital

States at the hospital that Bilsky was out of the van first, that Gray and he followed behind him, and then he imagines Jerry Poole behind him after he and Gray stepped out of the van. As he steps out of the van with Gray, he looks to the right, sees one officer striking Bilsky over the head with a gun. Before seeing Bilsky struck by a police officer, he did not see Bilsky strike any police officer. States that he and Gray didn't strike anyone, and states that he didn't see Poole, because Poole was behind them at that juncture.

At this point, he was swearing and cursing at the officer beside him, can't remember exactly what he said, but was uptight about the situation. States that this officer grabbed him around the neck, another officer came in front of him and sprayed his face with mace, and that he and Gray were then escorted into the hospital. He can't be sure whether the person who sprayed him was a police officer or a guard. He thinks it was mace that was used.

He doesn't think he was struck after being grabbed as above. Gray was handcuffed to him at this time, and has no recollection at time of arrival at the Foothills HOspital of rolling around on the ground with Mr. Gray, hemself and another police officer. Certain this did not happen. States that walk was difficult, but that when he got to the hospital and he got out of the van he was more awake and it wasn't so bad. States he had no difficulty with that short distance at that time. He was taken into the hospital with Gray; four of them come into a room, the other two persons not identified, handcuffs were undone, then they were each put in separate rooms. If the inamte saw Bilsky in this room at this time, he does not remember any cuts or any blood, or anythign like that, on Bilsky.

Saw police dogs on this evening, one at the hospital inside the Emergency entrance and one back at the Institution. Says the dog at the Institution was near the van and one of the officers was holding him. Saw no dogs inside of the Institution.

States that when put into a separate room at the hospital, he was given something to make him sick, and was sick, and felt better after he was sick. Can't recall how long he was kept in the hospital after being sick. States that he was certainly drunk as a result of having drunk the 'homebrew' in question.

Can't remember whether the van he was placed in on the way back was a police van, but does remember making comments to the guards who were there in the van. States he was involved in the name-calling, and was swearing and cursing at the officers in the van.

4. The Incident Upon Returning to the Jail

States that when the van got back to the Institute that he noticed himself and Bilsky were handcuffed behind their backs, that Bilsky got out of the van first, that as he was getting out he was grabbed by the head and pulled out

of the van and fell on the ground. States that he came out of the van second and got knocked on the ground and got back up and walked to the front doors of the Institute. It was a police officer that grabbed Bilsky by the hair and pulled him. Does not know himself how he got knocked down when he came out of the truck. He cannot remember whether he stumbled or fell or was pushed. Knows he got back up and stumbled again and got pushed, got his balance and walked through the corridor towards the Guard Room. He did not see Poole get out of the van at all and did not see Gray come out of the van at all, as they were both behind him. he did not see Gray, Poole and Bilsky before he got to the Guard Room in the door to the Segregation Cells.

All this time, his hands are cuffed behind his back. Does not know who the two guards were who escorted him down to Segregation. Doesn't know who knocked him down in the Segregation area. States handcuffs were left on within the Segregation cell he was put in. He did not go to sleep; just sat there. Did not see Poole come into Segregation, did not see Bilsky come in. Had no communication with any other guards that night, other than when they came in to take the handcuffs off. No problem at that time. He was not hit, had no cuts on his body next day. A couple of cuts on his head, on the back part. Cannot recall when he received these. Cannot recall being struck on the head by any guards. On the way downstairs from the Guard Room to Segregation was escorged by two guards, made the first flight of stairs okay, on the second flight, seemed to go down or got dragged down, started to get up at the bottom, was regaining his balance, and states he was knocked down again, dragged into a cell -- all of this with the handcuffs on. Does not know if difficulties on return to Segregation at jail were attributable to alcohol or not. Cannot remember being pushed or struck at that time. Thinks could have received bumps and cuts at that time, because he couldn't put his hands out in front of him, being handcuffed behind his back.

Michael Bilsky

Inmate Bilsky begins his testimony by seeking the protection of the Canada Evidence Act.

1. The Production and Consumption of 'Homebrew' Alcohol

Bilsky is a cleaner housed in the Cell Block on July 15, 1973. Consumes 'homebrew' with the other inmates made from tomato juice. States he drank at least half a

gallon. Doesn't know how much Poole drank, whether more or less than him. Cadieux drank about the same amount. States it's hard to say how much anyone drank; the brew was in a big plastic container. Admits recollection of the whole incident is pretty hazy.

States that he knew he was getting drunk. Finished drinking the alcohol in the cell occupied by three inmates, went to sleep after he quit drinking. States he must have passed out. Next thing he remembers is someone hollering his name, telling him to go to the Guard Room. Wakes up and goes to the Guard Room, a little bit unsteady on his feet. Felt he was drunk at that time. Merriam asks him if he has been drinking, tells him he is going to the "hole" for being drunk, after a discussion on the subject. Is taken down to the "hole", and guards were bothering Cadieux, he told them to leave him alone, and he was told to go into the cell, and that was about it. States he went back to sleep when he went into the "hole".

2. The Removal to Hospital

States the next thing he remembers is getting out of the van at the Foothills Hospital. Firstly, does not remember getting into the van or the ride down. Then, later in his testimony, there is a contradiction between the above statement and his statement in this part of his testimony that he can't remember anything from the time he left the jail until the time they arrived at the Foothills Hospital, in that the inmate recalls some conversation during that interval. He does admit the conversation in the van was about the guards, but states: "I don't know", when asked about whether the conversation related to overpowering the guards or escaping. He then states there was no discussion about escaping from the guards.

3. The Incident at the Hospital

At the Foothills Hospital, states "I tripped when I was coming out of the van and I ran into a policeman". The policeman was in front of him, and he ran into the policeman, "with my handcuffs". The handcuffs were up in front of Bilsky in a raised position. He imagines the handcuffs ran into the middle of the policeman, and states that the policeman said it was his nose, but he does not recall. He states that the next thing he knew he was down on the ground "and I was getting breat on the head with a gun". States it was a policeman who was beating him, not a prison guard. "Prison guards don't pack guns." States that he was handcuffed alone when he came out of the van. States that the beating on the head gave him a few bumps on the head, that's about all. He may have had a cut above the eye. Does not recall when this was invlicted upon him.

States that after he exited from the van at the Foothills Hospital he does not recall seeing Cadieux or Gray involved in the scuffle on the ground with a police officer. Has no recollection about them getting out of the van, because he got out first and had enough of his own troubles. Evidence is he didn't see Gray, Cadieux or Poole exit from the van. States he didn't see them at all inside the hospital, either.

Recalls cursing and swearing on the way in to the hospital after the gun incident and being -iven something to make him sick. Does not know whether he was packed or dragged into the hospital, but states that he was not on his feet. States that he was dragged in by the hair and by one leg. States that he knew he was sick on arrival at the hospital, but didn't think he was dying. Was positive of this. Took the drug at the hospital, "because I got sick". Took the drug "because I was told to". States that he does everything he is told to do when he is doing time. After he was given the emetic, he kept getting sicker. Doesn't know how long he was at the hospital. Nothing else happened at the hospital.

On the way home, there was some hollering and screaming in the van. Thinks it was a police van. States he was handcuffed behind the back at this time, that he was handcuffed separately. He did not know about the rest. Admits there was cursing and swearing going on in the van, that he probably didn't take part, because he was sick in a corner of the van.

4. The Incident upon Returning to the Jail

They arrive back at the jail, the door is opened, someone says: "Come on out!" Someone in the van hollered: "Come and fucking get us." Doesn't know who yelled this. States that he went to get out first, someone grabbed him, a policeman or a guard, by the hair, pulled him out, and then the dog bit him "on the ass". He can't say how many times. Fell on the ground when pulled out of the van by his hair. This is the point in time that the dog bit him. States he tried to get up from there. Doesn't know whether he was hit or punched, but every time he tried to get up he would get pushed down. Thinks he must have crawled into the jail, whereupon some guard or policeman got him by the hair inside the front door and he was dragged down to Segregation by this means.

States he did not get a chance to walk, there were guards all over the place, one guard dragging him to the door to Segregation, still on his feet, by the hair, and not saying

anything to them, they saying nothing to him. Dragged him down the stairs and threw him into the cells. Stated at this point someone started kicking him in the ribs when he was in the cell. He was still handcuffed. States he was kicked ten or fifteen times and then left there with the cuffs on for an hour or so. States that John Schlegel came and took them off. States he was not struck or pushed at the time the cuffs were taken off. Doesn't know who kicked him in the cell.

States he has been in the Institution thirteen months, does not know most of the Correctional Officers by name; does know some of them. The reason he can't remember who dragged him downstairs or who kicked him in the ribs or who pulled him out of the van, and whether or not it was policemen or guards, is because his hands were cuffed and his face was down. Estimates that when they arrived at the jail it was close to 12:00 o'clock. There was a guard change going on and there were many different faces running around. States that there were not over a hundred people there, and not sure whether there were under twenty.

When he got back to the Institution, he states that he was capable of walking back to the Institution from the van, but was knocked down every time he tried to get up. Thinks he must have crawled in. He just doesn't know. States inside the door of the Institution he tried to get up two or three times, and this is when he was grabbed by the hair. Feels he got a few boots here and there generally. States he never tried to hit anybody. He couldn't.

States he didn't lose much hair as a result of this incident, upon combing it the next day. Did not see Cadieux or Poole in the cell block when they got down there. Didn't see them brought down. Next day had a black eye. Bruises where you wouldn't notice, and went up to see about his cuts later. These would be the dog bits. The dog bites were not bandaged, and he received no shots. States that the doctor said that they were healing properly and just left them. States he did bleed from the dog bites.

John Alexander Schimmons

On the evening in question, was down in the Segregation Cells, not down there on any charge. Put there because the Institution said he was a security risk and they felt that he was going to try to escape. Saw Jerry Poole brought down into the Segregation area by four or five guards,

Poole was pretty drunk. He was in Cell No. 5, came to the bars. They took Poole to Cell No. 4, and while they were taking him, Cater took Poole inside the cell and hit him with his fist. Standing at the side of Poole when he punched him, to Poole's right side. Struck Poole on the right side of the head. Did not hit him on the shoulder. None of the other guards struck Poole.

Poole staggered around after this blow until they put him in the cell. The Segregation area gate was open at this time, but the cell gate was not.

Next morning when they were up to exercise, Poole told this inmate that he had black eyes, told him about the dog bite, and stated that he had marks on the side of him where he was bitten and that his rib cage was bruised. States that he saw the marks. States that he had been bitten by an animal himself and that marks on Poole were consistent with having been bitten by a dog.

States there is no reason he knows of why the night before Poole was struck in the Segregation area, because there were five guards there and he was under control. Poole was not handcuffed at the time.

SECTION 5.2.3 Testimony of Custodial Staff: The Incident Concerning Consumption of Poisonous Alcohol, Being Charged

James Alfred Morrow

1. The Removal to Hospital

This officer became involved in this incident on the day in question by being summoned to the Guard Room working in the North Wing Control at the time. Asked to escort four inmates to the Foothills Hospital along with three other officers.

Did not help to take the prisoners out of the Institution, stepped into the van after the four prisoners and three officers were already in it, rode in the back with the prisoners after closing the door behind them. States no problem going from the Institution to the hospital, two inmates were handcuffed separately with their hands in front of them, being Bilsky and Poole; Cadieux and Gray were handcuffed together. Poole handcuffed by himself at the back of the van, Bilsky by himself in the front seat beside Gray and Cadieux, Gray's right hand handcuffed to Cadieux's left hand. That is, each Gray and Cadieux on the way down had one free hand, this office is fairly certain. States that he did not handcuff Cadieux and Gray but put the handcuffs on Gerry Poole. This officer reiterates his conviction that there were only three sets of handcuffs involved for four inmates on the way down. Officer Martens was in the back of the vehicle with this officer, and Andrews and Attenborough were in front.

Things got a bit rowdy on the way into the hospital. States word "escape" is mentioned quite frequently and "they seemed to snap out of their intoxication right away and they said you pukes are nothing but a bunch of bloody bastards and we will walk right over the top of you when this vehicle stops". Cadieux asks them to take the cuffs off, told to settle down, similar direction to Inmate Gray. States he ignored the inmates because he was scared. Nothing else happened on the way into the hospital other than this verbal abuse.

2. The Incident at the Hospital

On arrival at the hospital Andrews goes into the hospital to summon the two City Police to assist the guards. Andrews opens the side door after this officer steps out and

states that Bilsky then said "the pigs are here, let's get them". States "and he walked right over the top of me and went after Constable Johnston". Cadieux and Gray came out right afterward and Poole stayed in the van. States he told Poole "if you don't want to get involved in this Gerry I will take you in".. That is what was done. States that when he got out of the van, he stepped out backwards, and that Bilsky came right over his shoulder and struck Constable Johnston with his handcuffs. Believes it was on the side of Constable Johnston's neck. Generally, states there was an ensuing scuffle and Andrews, Attenborough and a nursing orderly helped subdue Bilsky, Gray and Cadieux. Does not know the name of the orderly.

States that Constable Krauss told Gray to settle down so Gray just stood there and there wasn't much Cadieux could do because he was handcuffed to Gray. States that Cadieux was on the ground and scuffling but can't state who with, states it might have been Constable Krauss. States that he did not see much of the scuffle itself because he was busy taking Poole into the hospital.

States he stayed with Poole on a portable stretcher while they gave him a drug to induce vomiting to bring up the poisonous liquids supposed to be in him. Was aware that this was the reason why the prisoners had been taken to the hospital. States he assumed it was poisonous. At the hospital for about 45 minutes to an hour.

States City Police Sergeant Hibbert told them that he would assist the guards taking the prisoners back to the Institution. All four guards went back into the van without any inmates of the Institution with them in the van. States that the police van pulled up to the Institution after returning from the hospital behind the Institute vehicle which this officer was riding, this officer walked right into the Guard Room at this point, and did not see the inmates get out of the van or brought into the Institution. States that he took his radio that he had on his hip and the flashing light from the vehicle when he went into the Guard Room.

States that on the trip back to the jail, the police van was escorted by four police cars with two men in each car, so there would be at least eight police officers present back at the jail. States that when they arrived at the jail at the door there were about four spare members left over from the midnight shift. States therefore that there would be about 16 men outside the jail when they arrived at the jail.

States that he escorted Poole from Hospital into the police van and that Poole was handcuffed in front. States that all the others were handcuffed behind their backs going back. States that the Police lent a pair of handcuffs to the guards, in order that each inmate could be handcuffed separately

behind their backs. Poole was handcuffed in front because he had been no problem at all. States he told Poole on putting him in the van "look, you are going to have to ride like this because of the trouble we have", and that Poole said "okay". It was the other three inmates that created the disturbance. States that Poole was not struck by anybody when he was brought from the hospital into the van. States he escorted Poole by putting his arm on him, because Poole was kind of wobbly because of the intoxication. States that after he put Poole into the police van, he went back to stand by the room in the hospital where Bilsky was being kept.

3. The Incident Upon Returning to the Jail

The reason why this officer went directly to the Guard Room on the return to the jail is simply because he had his arms full of a radio and the flashing dome light. States that at this time it was raining quite hard, he didn't have a raincoat but it didn't matter, really.

William Donald Andrews

1. The Removal to Hospital

Became involved in the incident when he got a radio call while on patrol at the jail to report to the front door, at which time Mr. Merriam informed him that he was to help escort four inmates down to the Foothills Hospital that had consumed some sort of liquid. The inmates were already in the van when he arrived, so he got in the front beside the driver and they departed.

States that the four inmates "were a bit under the influence of something and they were very belligerent and used foul language" on the way down to the hospital until the van arrived there. Recalls that two inmates were handcuffed together and two individually. On cross-examination states that the prisoners told him on the way down to the hospital, that when the handcuffs are taken off at the hospital, which the doctor usually requests, that they would "walk all over" the guards. States that he never had a chance to find out about this. Officers Morrow and Martens are in the back of the van on the way down. States he heard remarks on the way down but couldn't identify who it was because the van was dark.

2. The Incident at the Hospital

On arrival at Foothills Hospital, he got out of the

van and went in and got the two constables, Johnston and Krauss, who came out. When they opened the van door, Bilsky charged out and said "the pigs are here". Bilsky caught Constable Johnston across the nose with his handcuffs as he came out and jumped on Constable Johnston. States that he subdued Bilsky and he settled down a bit thereafter, he let loose of him, and Bilsky attacked Constable Johnston again. States there was quite a litte battle at that time, the constable was pretty shaken up because he was hit hard across the nose. This officer says he did not strike Bilsky while subduing him, he just had hold of his neck around the back. States that at this time no other correctional officers were involved in this melee with Bilsky. States the second time Bilsky began struggling Attenborough came out and gave some assistance. Didn't observe what the other inmates were doing during this interval, being busy with Bilsky.

States the second time Bilsky charged Constable Johnston after the first incident that Constable Johnston was "pretty well half conscious I think"; he was staggering around. States that himself, Attenborough and a nursing orderly grabbed Bilsky at this point, that they both hit the ground and he went underneath the pile. Does not know the name of the nursing orderly. There were two incidents described in testimony referred to above outside the hospital involved with Constable Johnston and a bit of a disturbance inside of the hospital where Constable Krauss grabbed Bilsky when "Bilsky got a litte riled up". States that he never saw any gun drawn at all during all three of these incidents. States that Constable Johnston had red marks around his nose where the handcuffs had caught him across the bridge of his nose. States Constable Johnston was not "in the best of shape".

Does not know of or didn't see a mini-streamer used during all of these incidents. Had no gas gun or anything like this with him, because he was on patrol at the jail before this incident, he wasn't aware of what other equipment or gas dispensers any other officers might have had. Does not recall gas being used on any of the inmates on the way into the hospital. States that he looked after Inmate Gray within the hospital for the next two hours, and Gray gave him no trouble at all.

3. The Incident Upon Returning to the Jail

All the inmates were taken back to the jail in the police van. He and the other officers came back to the Institution in their own vehicle by themselves, with Attenborough driving. On arrival at the jail, Cater told them to park the vehicle, which he did, and he states that he knows nothing else of what happend thereafter. States he did see the other van drive up carrying the prisoners, but he was driving away at

the time to park. He did not see anything in Cater's hand when he arrived at the jail, because he did not get out of the vehicle but slipped across past the motor and into the driver's seat.

Walter Frank Martens

1. The Removal to Hospital

Was called to the Institution by Cater on the night in question and told there was an emergency and to come over right away. Sent directly to the Cell Block where he helped three other officers who were already there to bring the inmates involved in the incident from their cells to the Guard Room. States that he brought Bilsky to the Guard Room. The other three inmates were brought into the Guard Room at the same time. States that Bilsky could walk on his own and didn't need any help. At the Guard Room handcuffs were placed on the inmates. States he knew the reason why they were placed on the inmates. States he knew the reason why they were going to the Foothills Hospital because they had been drinking a concoction potentially poisonous. States that he thinks it was Cater who cuffed Cadieux and Gray together and states that there was only one set used on Cadieux and Gray. Poole and Bilsky were then each cuffed separately. Helped escort priosners into the van. No difficulty walking. Proceeded in the van, three other officers and four inmates to the Foothills Hospital.

States that the inmates were belligerent and using four-letter words and threatening to "walk all over us and walk away from us". He more or less ignored these remarks. He was in the back of the van with these inmates, and Mr. Morrow. As a result of the abuse delivered by the inmates verbally on the way dow n to the hospital, he never made any counter threats to strike the inmates back or deal with them in that manner. States that on the way down it was the other three inmates and not Poole who were making verbal assaults on his character.

2. The Incident at the Hospital

States that when they got to the hospital the van was opened, Bilsky stepped out "and assaulted a police officer and there it was, just one big donnybrook". States that Bilsky jumped out of the van as quickly as he could, the police officer had no chance to step aside, he was on him very quickly. Didn't hear Bilsky say anything coming out of the van. He was still in the back of the van and was the last one to get out of the van. He is willing to describe the

scene upon arrival at the hospital as "quite a wild brawl". Describes the two inmates he was dealing with, Cadieux and Gra-, as offering some resistance in that they stubbornly didn't want to go into the hospital, but they were only taken by the arm and pushed and helped along. States that he never struck or hit them in the back at any time.

He never saw anyone strike Bilsky, but he did see Bilsky wrestled to the ground and see Bilsky strike Constable Johnston. He did not see Johnston attacked the second time but picked up this knowledge from the other guards. He saw Bilsky assault the police constable on the nose with his hands cuffed together. States he did this as he stepped out of the van. He hit the constable right on.

Cadieux and Gray stepped out of the van just ahead of him, there was a bit of pushing around but they managed to get these fellows into the Foothills Hospital without too much trouble. He didn't see Cadieux or Gray strike anybody. There was a bit of pushing but nobody fell down. He just escorted Cadieux and Gray in by holding them by the arms and states that there was another correctional officer assisting, he cannot identify that person. When they got in the hospital with Cadieux and Gray, Bilsky was still out in the parking lot, can't remember where Poole was at this point, someone else was with him.

In the hospital, Cadieux and Gray were "belligerent and abusive in front of the hospital staff". States that the inmates were still saying "take off the cuffs and they would walk all over us". States that there was a little bit of restraint required but no physical violence within the hospital. States that the restraint directing the inmates to different rooms was not done violently; there was leading by the arms to the separate rooms.

States that someone had a mini-streamer in the group of four from the Institution, and used it at the hospital. Does not know who. He got some of the gas from this mini-streamer in his eye and the inmate that was squirted was adieux, one of the inmates he was helping escort. States Cadieux was resisting at that time and that he refused to go into the hospital, bracing himself in every way he could, but had not struck anybody before he got shot with the mini-streamer. Did not see whosquirted Cadieux; only felt the stuff in his eyes. Knows it wasn't himself who did the squirting. Does not know which of the other three officers, Morrow, Andrews or Attenborough, who did the squirting. Thinks that the person who did the squirting might have been Mr. Attenborough. The squirt applied was not a steady spray, just a shot, or something like this.

Cadieux and Gray were simply handcuffed together with one set of handcuffs. They were not handcuffed together as well in front of them with separate handcuffs, that is, each one of them had one hand free. This officer agrees to the question to the effect that the shot of gas was to get Cadieux and Gray moving. In the hospital, this officer looked after Bilsky, and does not know who looked after Gray and Cadieux thereafter. He picked up Cadieux after the emetic treatment because he was the first one coming out to the van. On the way out, each inmate was handcuffed separately, the extra set of handcuffs having been obtained.

3. The Incident Upon Returning to the Jail

States that he proceeded back to the jail in the van with the other three officers that they had come down with, and the prisoners were in the other police van. Merriam proceeded to and from the hospital in his own car. When they arrived back at the Institution, there were ten or fifteen other persons besides these officers. Believes there were four police vehicles and a police van and that it was raining and dark. There was one police dog quite a ways back of the van on a leash, with someone holding the leash. Did not see anyone get bitten by this dog.

At time of arrival at the jail, did not see Cadieux leave the police van, but did escort him directly from the police van, with Officer Attenborough from a point at the door of the van into the jail. States that Cadieux got out of the police van on his feet and did not fall. States that when Cadieux got out of the police van, he grabbed him by the arm again, and that Attenborough had the other arm. States that as escorted in, Cadieux did offer resistance, that is, "he braced feet every time he had a chance to. He was reluctant to go". States that he and Attenborough did not drag Cadieux, nor drag him by the hair, nor have hold of him by the hair, nor strike him. Attenborough did not strike Cadieux, and he saw no one strike Cadieux from the time he got out of the van until he got to the Guard Room.

From the Guard Room assisted putting Cadieux down in the Segregation Cells. Evidence indicates that Cadieux was pushed enough to "take him down" the stairs, not on his head, but he was walking and he did not fall going down the stairs. Cadieux was not struck going down the stairs nor in the Segregation Cells area. Cadieux went to his knees when he entered the cell, was forced into his cell to get him in there, which might have been a push. Cadieux was left in his Segregation Cell with handcuffs on. Cadieux was held by the arms all the time they went down the stairs to Segregation; still handcuffed behind his back. Handcuffed, no need to strike him.

This officer escorted Bilsky from the Guard Room to Segregation Cells, with Schlegel having gone back up the stairs to help with Bilsky. Bilsky did not fall down the stairs and was not held by the hair, nor dragged from the Guard Room to the Segregation Cell area by the hair. Taken down to the Segregation Cell same way Cadieux was taken, each officer having an arm. This officer and Schlegel did not strike Bilsky as they took him form the Guard Room to the Segregation Cell area. This officer saw no one strike Bilsky, did not observe any injuries on Bilsky's head or face at this time. Bilsky did not fall at all in the Segregation area. States that he was bracing his feet all the way down, but that he was on his feet. Bilsky went down on his knees as he went into the cell. States that he pushed him into the cell because he was reluctant to go in. Bilsky was left with his handcuffs on as well when this officer went back upstairs. Did not see Inmates Poole or Gray after this.

This officer did not do anything more than push the inmates into their rooms, holding them by the arms, didn't kick them in the shins, the calf, the back part of their legs or put his knee in anyone's back to get him moving. States the reason the inmates who were put in Segregation fell on their knees was that they were pushed into the cell and tripped as they were going through the door on the side of the cell door. States he saw no mace squirted in anybody's face to subdue the inmates. States that he did not swear back at the inmates who were swearing at him. States he heard no police officers swear at prisoners. States that he saw nobody (meaning prison officials, prison guards or prison officers) strike the prisoners by slapping, punching or kicking them in any way. States that enough force to handle the situation generally meant "just to grab the fellows and take them where you want them to go".

James Bernard Cornish Attenborough

1. The Removal to Hospital

Gets involved in the incident at 9:00 p.m. on the day in question going on duty. Realizes there is something wrong and stays to help. Goes to the Cell Block, which he was told to do, and brought Bilsky up to the Guard Room, with another officer. States that Bilsky walked to that point. At the Guard Room, the four inmates were handcuffed. They had only three sets of handcuffs, so Cadieux and Gray

were handcuffed together with one set of handcuffs. At this time there were only three sets of handcuffs available in the Institution. Doesn't know where the rest were.

Next, helps escort the prisoners from the Guard Room to the van. No difficulty, they all walked. The prisoners were going to the hospital for medication to empty the stuff out of their stomach. Knew that it was believed that they had taken air freshener or turpentine perhaps, and might be poisoned. This officer drove the van to the hospital. States there was "the usual abusive language" on the way down to the hospital by Bilsky and Cadieux principally, and a bit by Gray; Poole not involved in this. States there was some belligerent discussion about escape on the way down: "Take the handcuffs off and we will walk all over you."

2. The Incident at the Hospital

At the hospital in a place where the ambulances drive in, they drive into that area, Andrews gets out and police appear. The side door was opened, he gets out of the driver's side and comes around. By that time a fight was on. States: "As far as I am concerned, no one precipitated anything. Bilsky and Cadieux were the ones that started it." In response to the question: "Did you see any of the police officers striking Bilsky on the head with anything?", states: "One police officer who was staggering around after being hit." Did not see any other police officer strike Bilsky with anything. Indicates the other police officer on the scene attempted to hold Bilsky with the assistance of Andrews. That officer did not have a gun in his hands. This is when he grabbed Bilsky and a bunch of persons hauled him into the hospital. Did not see Bilsky get struck or hit during this time.

As this officer comes around the driver's side, he sees two fights, Martens "was attempting to stop Cadieux and I had the gas in my pocket and I gassed Cadieux. The top came off the can and I got it in the face, and so did Mr. Martens. I had no gas left to give Bilsky, who was struggling with the others." At this point, Martens was holding Cadieux, who was handcuffed to Gray, and Cadieux was struggling hard; he would squirt him and then on to the next one. States he had a mini-streamer, which is not a small can of gas, but more "like an over-size propelling pencil". (See Exhibit 4, similar.) Does not know who gave him the mini-streamer at the jail. He realized there was going to be problems, and "I got gas". Can't remember whether he got it himself or from someone else. Cadieux quited down after he was squirted, his

eyes having started to stream. Could not squirt Bilsky, as the top had come off the can and he had squirted Martens and himself and run out of gas. No gas left for Bilsky.

States that he equipped himself with gas on the way out of the Institution because he is aware of how people behave when intoxicated, and has been down in hospital before with people.

After Cadieux was quited down, this officer was tied up getting Bilsky calmed down. Bilsky struggled all the way, he states, and that they tried to get another set of handcuffs on his legs. States that eventually three or four of them held him and just carted him into the hospital. States that he held onto Bilsky by a leg. Didn't see anybody with a hold on Bilsky's hair.

States there are no instructions with regard to the use of gas. Just states: "None really, sir. Just common sense, perhaps. It's better to use gas." States that there are no specific instructions on the use of gas, "but it's not much good unless you aim it into the face". States that gas just like any aerosol can, but they are not made too wel. There is no specific instruction in the use of the instrument per se.

Refers to foul language directed against the hospital staff and everybody, once within the hospital, and that the inmates were eventually separated and that he had Cadieux in one room with two police officers. States at the hospital for about two hours. Went back from the hospital with three other officers in the Institution van, and the inmates went back in the police van. When they arrived at the Institution they were ahead of the police van.

3. The Incident Upon Returning to the Jail

States he did not help bring the inmates out of the van into the Institution, but that he was talking to the Warden and Merriam, at which time Cadieux was brought in by Mr. Martens. He took another arm and took Cadieux down to the Segregation Cells. Did not see the inmates being brought out of the van at all. Was inside the Institution talking to the persons referred to above inside the front door. States that when Martens arrived with Cadieux, Cadieux was not being dragged by the hair, but was being held by one arm. This is when he took the other arm. STraight down into Segregation, not to the Guard Room. On the way from the front doors to the Guard Room, neither he nor Martens struck Cadieux.

Cadieux was reluctant, but not boosted by this officer with a knee or anything of that nature. They each just held an arm and he was going along.

States that Cadieux was not pushed and did not fall down the Segregation stairs, and that he was held all the time until he was pushed or placed in the Segregation Cells. Doesn't know what Cadieux lost his balance on going into the Segregation Cells; this could have been from a push. Did not strike him at any time, because he was handcuffed. As far as he remembers, handcuffing was behind the back. The police had handcuffed all the inmates behind the back when they brought them back. When he left Cadieux, he was locked in his cell with his handcuffs on. No further involvement in the incident that night.

Allan Merriam

1. The Production and Consumption of 'Homebrew' Alcohol, Being Charged

Assistant Deputy Warden at the Institute, on duty on the 4:00 to 12:00 shift on the day in question. At about 8:00 p.m. was notified by Mr. Cater in South Wing that some inmates had been drinking. Went to the Guard Room, called all the cleaners down one by one, these being the people who have "access to moving" along the cell block, and interviewed all of them about the consumption of some kind of 'homebrew'.

Last man still interviewed advised him that they had been drinking tomato juice, yeast, water and had put mint spray in it, also round deodorant things carried around the bottom of the bag to keep the smell away from officers. Would rather not indicate which inmate told him this. The reasons relating to that inmate's safety in the jail. The result of all this is that he determines there were four inmates involved in the consumption of the brew.

States that at the time of this incident the mint deodorizer or air spray was available to the cleaners in the jail, and that now it is not. States that on the night in question they found an empty tin can marked "turpentine". Did not know whether the brew was in it or not. Smelled the brew the night of the incident, but no containers. Prisoners were taken to the hospital for their own benefit for fear that they had been poisoned, on the opinion of the jail nurse.

Put them one by one into Segregation until he got to the bottom of it. when he found out what they had all been drinking, brought them up, had the nurse check them and on her recommendation decided to take them to the hospital to have their stomachs pumped in case they had drunk poison.

2. The Removal to Hospital

Obtained the assistance of four officers, and used those four to send the inmates down to the Foothills Hospital, notifying the police of same. One of the four inmates brought down to the Guard Room from the Cell Block was brought down in a wheelchair because he was too drunk to walk and was sick to his stomach all the way down the halls. This was Cadieux.

Inmates were handcuffed at the Guard Room, Bilsky's hands in front of him, Poole's hands in front of him, and the other two handcuffed together by one arm. Only three sets of handcuffs at the Institution in the drawer in the Guard Room. There are some more there now. New ones. Does not recall issuing a mini-streamer or gas billy to any of the four officers. Proceeds independently by himself to the hospital in a staff car, arriving after the van had got there.

At the time this officer left in the staff car to go to the Foothills Hospital, nothing had happened in the West Wing, otherwise he would hot have gone downtown. Became aware of these problems at 10:25, when he radioed back to the Guard Room. At this time the four inmates in the hospital were already being treated, Merriam told people in the hospital he had to go back because there were problems there, and left the Foothills Hospital before the rest of the staff. States that no one in the West Wing was aware of what had happened down at the hospital, that he knows of, and that at that time he told Cater what happened: "I just told him there was trouble down at the hospital, and that was about, oh, oh, 10:00, 10:05, something like that. Then when I called back later, he said there was trouble in the West Wing, I'd better get back, and I rushed back."

3. The Incident at the Hospital

At the hospital, on his arrival, two City Police and two Institution officers were trying to subdue one inmat- on the ground, Bilsky. States at this point that Gray and Cadieux were already in the hospital by the time he got ther-, as well as Poole. Within the hospital, found Poole in a bed just inside the Emergency door and told him he didn't want any more trouble and Poole agreed there wouldn't be. Next went to a room where Gray and Cadieux were handcuffed together. When Bilsky was brought in he started to "shoot off his mouth". Obscene language, and then all these three were separated and put in separate rooms. This officer was at the hospital for about forty minutes.

States that he had told Cater when he left he would be in contact with him at all times by radio and refers to a message on calling Cater back at the jail, that Cater had said "I think we are going to have trouble in the West Wing". Thinks this was about 10:25 p.m. States at that time he agreed to return to the Institution. This reference of Cater is indicated to be to the incident which is previously re- ferred to in this Inquiry.

4. The Incident Upon Returning to the Jail

He was back at the Institute when the van arrived from the hospital with these four inmates. He did not watch the unloading of the four inmates. His first contact was when they came through the front door, when they held the front door open for them. Does not recall the order that they came in. When the four inmates were brought in the front door of the Institution, Bilsky was the only one who was putting up a bit of a fight, shoving his shoulders around,

trying to push the police officers out of the way. Essentially sort of pushing back on his feet. Does not say that Bilsky on the ground and dragged, but that he walked through the door. Cannot remember who Bilsky was being accompanied by. He did not see or does not recall seeing anybody getting dragged from the front door to the Guard Room, nor did he see any scuffles or anything going on outside the front door. Could see all four inmates brought into the Institute. Did not observe any guards pushing or kicking the inmates as they went through the door and down the hall. Did not assist in taking the inmates from the front door down to the Segregation Cells.

States that he saw a police dog out at the jail after it was brought into the Institution, but not outside, by an officer. Did not see Poole bitten by this dog, and did not see the dog bite anyone. Does not know how Poole got the cut over his eye. No stitches administered to fix the cut.

States that Poole complained about the dog bites to the nurse when he was upstairs.

No other contact with inmates that night, but this officer had taken Mr. Jackson to see Poole. States that Poole had a cut over the eylash or the eyebrow which was bleeding a little bit. This officer states that on the night Poole was brought back in from the Foothills Hospital, and saw the Warden in the Guard Room, he was speaking in coherent sentences, using English that was understandable. Agrees with a question to the effect that Poole appeared to be lucid at the time he spoke to Jackson in the Guard Room. States that matters Warden Jackson was discussing with Poole concerned the acquisition of the brew. Questions did not deal with any of the violence or the allegations of violations on the night in question. This was not an official Warden's Court hearing. Poole was not belligerent or hostile at this time. Indicates that this is the information the inmate has given him and he does not want to disclose same in this Inquiry,to protect th- interests of this inmate.

Poole did not complain about the cut over his eye and this officer "noticed it when he came in the front door, as a matter of fact". That is, Poole had the cut prior to coming into the Institution from outside. Jackson talked to Poole, they went up to the nurse to have some tape put on the cut. He believes the nurse washed off the dog bites Poole had revealed at the nursing station. States bite mark was on the right side of the middle of Poole's side. He "didn't think Poole knew what happened at that time", when asked whether or not Poole had complained about being beaten

by anyone. States that since the incident Poole has talked to him and doesn't remember anything after he left the hospital to come back to the jail. Poole has also told him since that the other inmates egged him on because he had not gotten out and fought down at the hospital. This is why he started to fight at the Institution. Merriam states that any contradiction in the above statements is the result of his just going by what Poole has told him in subsequent interviews.

Testifies that Poole made no complaints about being assaulted or beaten up outside the prison on the night in question, and no complaints about being beaten up inside. Does state that later on Poole stated that somebody hit him with a flashlight. Poole does not know who hit him. Merriam helped escort Poole over to the Guard Room from the nurse's quarters, and some others took him over from there and took him down to the new cells, then men's cells.

Walter James Cater

1. The Production and Consumption of "Homebrew" Alcohol, Being Charged

Became involved in the incident upon receiving a call from the Cell Block that four cleaners had consumed 'homebrew'. Closed the Cell Block whilst an attempt was made to find out what the ingredients were, because some of them were believed to be poisonous.

States he questioned Cadieux on what he had drunk and that Cadieux would not tell him but got obnoxious and wanted to fight and swore at him. States that while all or some of the inmates involved were still in the Cell Block, he was investigating what was in the brew. He states that eventually he found out from Poole that they put tomato juice, yeast and mint deodorizer in it. Checked the mint deodorizer can and saw an ingredient, principally ethylglycol, which he knew is a poisonous substance. Went to nurse, and she state- they had better get them down to hospital right away.

The inmates involved were brought to the Guard Room and Cadieux was throwing up at this time. Cater suggested that he be brought down to the Guard Room in a wheelchair. At the Guard Room, he handcuffed Gray and Cadieux together; they had three sets of handcuffs. Doesn't know who handcuffed the other two, but they were handcuffed individually. Used just one set on Gray and Cadieux. Believes it was Cadieux's left arm and Gray's right arm.

2. The Removal to Hospital

States that he just walked down with the inmates to the front door, opened the door, and they got into the van themselves. States they appeared to sober up right away, compared to what they had been like before. He remains at the jail.

3. The Incident Upon Returning to the Jail

The next thing Cater hears is a radio message from Merriam, stating that they were on their way back. Then they got another message that they were in the vicinity and he and several other officers went to the front door, where it was found to be raining at the time. When the jail van came along, he went out to open it, found there was nobody in it. He said "Where are the inmates?". He was told they were all in the police van behind. Cater therefore said: "Well, you better get this thing out of the way, then." Cater then went back to the front door to open the door for the inmates to come through, but states "there was a bit of a scuffle later on".

States he did not help take the inmates out of the police van; he was standing at the front door, not in the vicinity of the van. States he did not notice the order in which the inmates came out of the van.

States he saw Poole jump out of the van with his handcuffs up, going for a police constable. States two other police officers and one of the Institution officers, Officer Addinal, then closed in. States that Poole had held his handcuffs up high. He saw no inmate actually struck from the time anyone came out of the police van until the time they went through the door of the INstitution. Cannot state whether Poole ever struck anyone, and states that all he saw was Poole with his hands up above his head, and three people converging on him thereafter.

States that the people who converged on Poole were trying to pick him up, and he did not see anybody hit Poole at this time. Did not see a cut over Poole's right eye when he came in the door. Was not looking at his face at all. He did see the dog go for Poole, but didn't see the dog actually contact him. States that Poole was wrestling with a policeman at the time the dog went for him. This was after he raised his arms over his head, but before he went down on the ground. States that the constable that Poole headed towards with his arms raised was probably touched by Poole or sort of reeled backward.

He doesn't think any of the City Police had been wearing raincoats. The police dog outside which he saw was located between Addinall and another police officer and moved in between them and went for Poole and caught him on the shoulder, or something like that.

Next thing he saw was Bilsky lying on the ground, that in the meantime Poole had been taken in, and the other two.

This officer states from hand notes made at the time that he saw Poole on the 20th of September, 1973, at which time Poole, according to this officer's notes, said to Officer Cater: "You hit me with a flashlight, or someone did, and I'm gonna get you, you bastard." States that Officers Barrett, Fenton and Martens heard that conversation and were standing by when it happened. Cater states that on the night in question he does not know if any of the constables on duty outside the jail had flashlights, and does not believe that any members of the staff in the Institution would have one, because, he states: "There was no need for one." States he cannot recall seeing a flashlight at all.

He did not have a flashlight or a billy club in his hand. States that he was fifteen feet from Poole and could not have struck him on the head with a flashlight or a billy club at this time. The van was not right at the door.

Next, he picked Bilsky up and helped him inside the door, which is where he left him. Came back at this time to see if everything was okay outside. Invited police officers in for a cup of coffee, and that was it. It is his evidence the only inmate he handled at all during this phase was Bilsky. Bilsky had fallen on the ground, eight or nine feet from the door. He did not see anyone push Bilsky down and states that he went and helped him as he was opening the door for the others to come through, when Bilsky fell down. He picked Bislky up by the arm and lifted him straight up. No other officer helped him take Bilsky through the front door. He did not strike Bilsky or see another officer strike him at this time. Andrews was out of the van by this time and he made sure it was locked up. This is when he asked the police in for coffee. Did not see who took Bilsky down the hall after he went back out the door.

Constable Michael Stanley Johnston

Becomes involved in the incident when called to the Foothills Hospital to assist jail staff in bringing in prisoners for treatment. Went there with Constable Krauss. Jail van

entered Emergency area, Attenborough driving. Moves to side of vehicle with Constable Krauss. Andrews opens the side door. At this time, "Bilsky, who was the first one inside the van, jumped out and caught me across the nose with his handcuffs". States that Bilsky said something to the effect, as he got out, "Get the pigs!" States he was approximately three feet from the open door. No time to react at all, one or two seconds elapsed.

States that as a result of this he flew back against the wall about four or five feet and hit the ground. He managed to get to his feet and tried to grab hold of Bilsky, who was trying to leave the Emergency exit. This was an open door he was heading towards. One of the guards jumped on his back and there was another scuffle.

States that when he hit the ground he believes his gun fell out and that he picked it up and it was in his hand. When he realized it was there, he put it back in his holster. Perhaps twenty seconds elapsed during this interval. States that he did not strike anybody with his gun. States that he did not see Constable Krauss at all, and did not see Constable Krauss striking anyone with his gun during this interval. Thereafter, they took the inmates into the Emergency Ward. This officer sprained his hand. States inmates were split up and put in separate rooms adjacent to the main treatment room. This officer had his hand X-rayed. Had a cut on the bridge of his nose which didn't require further treatment that night.

Sergeant John Hibbert

1. The Incident at the Hospital

Got involved at 10:00 o'clock on Tuesday, July 17, 1973, when out in patrol car and called to the Foothills Hospital in response to an indication that a unit there was in some sort of trouble. Went in and spoke with Constables Johnston and Krauss, their uniforms were disorderly, ties missing, and it appeared there had been a scuffle. At one side of the Ward found three different prisoners in three separate rooms there: Cadieux, Poole and Gray. On the other side of the hospital, in a separate room, was Bilsky. Ascertained from the staff that the problem was pertaining to drinking and poison, and on the basis of this information concluded it was not safe "for the four prisoners to go back in the vans and down from the Institute".

Suggested to the jail personnel that the prisoners should be taken back in a police paddy wagon. He decided that the prisoners should be handcuffed with their hands behind them individually, using police handcuffs. The prisoners were taken back to the jail in the paddy wagon and were stopped at the jail yard.

2. The Incident Upon Returning to the Jail

States that other police officers were then back at the Institute beside himself, including Constable Holmes wit- the dog, who had been at the hospital, and himself, and the paddy wagon crew, totalling possibly five or six officers. He believes that there was also a traffic car on detail. States there was one dog at the jail. The door of the paddy wagon was opened by its driver. This man is a few feet from the door. Four prisoners told to get out. They did not, calls out Constable Holmes and the dog a little closer to the van. Bilsky comes out on his own, taken by Institute staff and immediately starts to struggle.

Second out is Poole, out of the van, no trouble at all at the hospital -- docile, self-controlled. Here, he steps out of the van, lunges at Constable Holmes or runs at him. States he seemed to strike Holmes in the chest, and the dog at Holmes' side lept up at him. States the dog was on Poole but cannot state whether or not he bit him. During altercation between Poole, Constable Holmes and the dog, states that Holmes was trying to pull the dog off Poole. States that Holmes was unbalanced because of the way that Poole had gone after him, having taken steps backward, whilst the dog leaped and pulled him forward.

Holmes never went to the ground, but Poole did, from being hit by the dog and his momentum. People who converged on Poole were the two guards who were about to take him down, as well as Holmes. States that Poole was struggling in all the way towards the door. The guards were just holding either of his arms, and not striking at Poole at this time. Never saw Poole with a cut in his face at this time, or later. Didn't see anyone with a flashlight in their hand on the night in question. States in so far as he knows there are no flashlights in the prison courtyard. Didn't see any blows at all landed by the guards.

This man indicates that Poole was handcuffed behind his back, which evidence suggests it would have been difficult for Poole to raise his hands over his head.

Cross-examination of this witness brings out the point that he had made the decision to have the prisoners handcuffed behind their backs at the Foothills Hospital, because it would be more difficult for them to make trougle if their hands were handcuffed in this fashion. This officer agrees that if the evidence of Poole was that he endeavoured to keep himself on his feet by grabbing at a policeman's raincoat, that he would have some difficulty doing this with his handcuffs behind his back, and he would also have difficulty raising his hands if they were handcuffed behind his back. This officer states at this point in his testimony that he does not recall who put the handcuffs on the inmates before they came back to the Institution. This officer did not supervise the handcuffing, he just gave instructions, therefore did not see them all handcuffed at the hospital. This officer states he has a distinct memory of Cadieux, Gray and Bilsky coming out of the van with their handcuffs behind them, but that he was not paying that much attention to Poole. He was relying on his previous instructions referred to above with regard to Poole's hands especially.

Did not see any prison staff or police officers strike Gray and Cadieux as they came out of the van and did not see anyone struck except Holmes. Said Bilsky began to struggle, as indicated above, but was not watching him and did not see whether anybody hit him thereafter.

Gray and Cadieux went in in normal fashion. Bilsky and Poole were the only two who offered any resistance going into the Institution, as far as he could see. Did not see them hit or pushed. Not in the courtyard within his sight.

Constable Edward James Holmes

1. The Incident at the Hospital

This officer was in charge of one police dog, whom he has trained. Called to the hospital, where he first left the dog in the car, and then in the foyer of the hospital. Observed shouting and abusive language by Inmate Bilsky. Made no use of the dog at the hospital, and was subsequently asked to proceed back to the jail. He went out there in his own patrol car, with cage in the back, behind the police paddy wagon. Took the dog out of the vehicle at the jail.

2. The Incident Upon Returning to the Jail

Sergeant Hibbert ordered the prisoners out of the van, and some jail staff; they would not leave. A pause of five or ten seconds, and he was advised by Hibbert to put the service dog in the van. States that despite Sgt. Hibbert's order, he would not have taken the dog into the van, because the dog would not have been effective in close, confined quarters like that.

Didn't do this, the dog started barking and Bilsky came out fighting and kicking, trying to hit the guards with the handcuffs. According to Holmes, Bilsky then "shrugged" one of the guards off and was attempting to put the handcuffs over his head, at which time Holmes put the service dog on Bilsky and the dog bit him in the thigh and the right buttock. The dog was taken off and one of the guards came out from off the steps and carried him into the Institute. No doubt in this officer's mind he is referring to Bilsky. States that Bilsky's hands were in front of him.

No doubt in this officer's mind about the fact that Bilsky's handcuffs were in front when Bilsky came out of the van. Bilsky did not charge towards him; he put the dog on Bilsky "after he had shrugged one of the guards and attempted to put the cuffs over the head of one of the guards". Bilsk- was on the ground only after this point in time, when the dog bit him. He was still standing when the dog bit him the first time, "and I would say he was on his knees, the dog got another bite in there", as the guards overpowered him. Bilsky therefore was bitten twice by the dog. States that Institution personnel wrestled with Bilsky really, because he is a pretty powerful man. States he does not recall any blows landing on Bilsky.

After Bilsky removed by others, positions himself halfway between the van and the front steps. Poole had "shrugged one of the guards that had grabbed him by the arm and came running at me full tilt. Just before he got in front of me, he came at me with his handcuffs, tried to hit me on the head and kick at the service dog at the same time . At this, all I could do was I moved the top portion of my body back and as he tried to kick at the dog the dog bit him under the right armpit and breast, knocking him off balance, and he was jumped by four guards".

With regard to whether Poole was struck during this altercation, he states the following: "Not right at this. When he was dragged up the stairwell, two guards had him. I saw one guard, I don't know who it was, reach over the guards that had hold of him, and hit him on the head with an

object. This is on the stairs just inside the doorway, Poole is still struggling at this time." Does not know who this was. Not one of the two guards dragging Poole. States that the object looked like a billy club and that he had not seen this type before. States that the object was similar to exhibits shown to him at this time, only he had thought it was black. Sure it was not any longer than the exhibits shown to me. Cannot name the officers dragging Poole up the steps, nor the officer who struck him, because he does not know any of the custodial staff at the jail.

States Poole was handcuffed in front as well and that Poole did not really strike or touch him, missed his head and hit his chest and jacket. Did not hurt. This is the point that the dog got at Poole, as previously indicated. States that the dog just bit Poole once. States that Poole did not go to ground, was knocked off balance and that three or four guards on the steps overpowered him and took him away at this point in time.

States that he saw no one strike Poole up to this point in time until the point in time where he saw someone reach over the two escorting guards in the stairs and strike Poole.

Very clear that the person who reached over and hit Poole hit him over the right eye. States that the person who struck Poole was standing at the main entrance into the foyer of the Institution. States that there was a group of guards around. The guards taking Poole into the door were having some difficulty with him -- he was still struggling. Poole was resisting, and made. Poole did nothing when he was hit. This officer did not see if Poole continued resisting after being hit.

This officer cannot say whether it is obvious or not that other officers in the area would have seen Poole hit in the manner described in the foregoing.

States that after this incident he resumed his middle position between the van and the steps, and saw Cadieux walk towards the stepway, with no one holding him; Cadieux looked at him and the dog and continued to walk into the cells. This officer was not further involved in the incident on this evening.

of the equipment of the Institution:. This query which produced this response was directed to whether or not this officer had seen Mr. Cater "in possession of any billy club or flashlight or any stick or anything similar to that". Further on this point, this officer states that if Poole had been hit on the head at this point, at this time "if that would have happened, his head would have hit mine and I probably would have had a cut eye".

This officer took Poole in the front steps and all the way down to the Guard Room himself, states he was all the time trying to break away and trip this officer, doing anything he could, in a very violent state. States he did fall and trip this officer and they both rolled to the ground during this time. He did not grab Poole by the hair at this time at all; he was holding both his arms. Put Poole in an interview room adjacent to the Guard Room, then went back to his night shift duties. He did notice Poole's cut eye when he got him to the interview room. Did not ask Poole how he got this cut. Poole did not complain about this cut at this time.

He saw Bilsky, Cadieux and Gray going downstairs into the Cell area that night, but no other involvement with them. Only other testimony with regard to them is that Cadieux and Bilsky came out quite aggressively from the paddy wagon.

Gordon Archie Williams

On the night of the 17th, about 11:15, took up a position at the main entrance of the jail to assist City Police bringing the prisoners back to the jail. Refers to the use of the dog after the prisoners did not voluntarily come out of the van, and that with the approach of the dog they started to climb out of the van. Does not know which inmate was out first.

States three came out with no problem at all. States the fourth inmate was pulled, or came out, lunged at the officer standing there, a member of the City Police force, with his cuffs in front of him. States he contacted the police officer bodily and that himself and other jail officers then stepped in. States he believes another police officer was involved trying to restrain Poole. States he

did not see Poole struck by a member of the prison staff with any kind of an object during this time, stood by the main entrance, because he couldn't go through the one door with all of the people and let the main group go in ahead. As going up the step, did not see Poole struck with any kind of an object by a prison official. Followed the group down the hall towards the Guard Room, during this time did not see any prison staff dragging inmates by the hair. During the scuffle with Poole outside, did not see the involvement of the police dog. States that when this Inmate Poole lunged at the police officer, he was five or six feet from him. If there had been a dog attack, this officer believes he would have seen it. States such an attack is possible, but he did not notice it.

This officer cannot state whether the other officers at the front door were armed with billy clubs at the time they waited for the prisoners to come back from the Foothills Hospital at the front door. He was not armed with a billy stick. This officer states that at the time Poole was brought to the interview room to talk with the Warden, there was a small trickle of blood on his cheekbone or on the sihe of his face. Did not notice whether this was present on his exit from the van. Does not know if it was there when he came out of the van.

John Schlegel

1. The Incident Upon Returning to the Jail

This officer's involvement was taking Inmate Poole to the sick bay after the development of the incident as referred to in the foregoing testimony. This is at the Guard Room where Poole was brought and someone had mentioned that he had been bitten by a dog. This officer took the decision, with Merriam, to take him up to the nurse. He was given treatment for the cut on the eye, the dog bit, and then he was taken down to the Guard Room and put down in a cell. This officer was involved in placing Bilsky in Segregation, but not Gray. He was d own in Segregation when Bilsky was brought down.

States that when Bilsky was brought in, he was being dragged, he was off his feet. Handcuffs were behind his back, guards on each side of him trying to take him through the grill gate. They were dragging Bilsky by the arms, as far as this officer recalls, not by the hair. Once through the gate, he was half on his feet and half being dragged. He was never fully on his feet. Did not see Bilsky

being struck during this interval, with a billy or flashlight or anything like that. States that Bilsky was left in his cell with his cuffs on because the officers had not completed bringing everyone back. He didn't go down to take the cuffs off, but knows that someone did.

States that Gray was taken to the Cell Block, but doesn't know who took him there.

States he was down in the Segregation area with Cadieux, but two other officers took him down there before this officer arrived there. He was on his feet at this time, and did not see anyone strike him; helped put him in his cell. Did not strike him himself. Had some difficulty getting him into the cell. This officer grabbed him by the left leg to get him off his feet, because they were having a hard job putting him in the cell. All of this was prior to this officer's involvement with Poole upstairs with medical aid and talking to Mr. Jackson.

Poole did not advise this officer how he had sustained the injuries to his forehead at that time. He states he does not think Poole even knew he had an injury there. States that Poole was in pretty rough shape and he seemed incoherent and didn't really know where he was. All Poole complained about at the nurse's was the dog bit. This officer just took Poole to the Guard Room and then other officers took over from there. No stitches to the cut; just a band aid. In his opinion, Poole was not incoherent on account of a blow.

States when meeting returning prisoners it is not normal to have a billy stick; states that guards meet prisoners outside at front of jail. Could have had flashlights or billy sticks, he does not know.

Mrs. Verne L. Turner

Involved in incident treating Poole's injuries. Called in for that purpose. Poole was staggering and had a small laceration on his right brow, in the brow, half an inch; fairly superficial. Also bruising and an abrasion on his centre abdomen and over to the right. Presumed it was a bite. Consistent with being a bite. This was not a penetration. Poole did not tell her anything. Not really that coherent, and she did not enquire. Cleansed the wound on his brow and drew together with tape. Did not require suture. Painted the abdomen wound with metaphen but did not bandage it because it was not appropriate. Poole was the only man she saw this evening.

On the 20th of July, Poole and Bilsky were brought up to see the doctor, who looked at their abrasions and wounds to satisfy himself that they were healing properly. Did not treat Bilsky between the 17th and the 20th for any injuries. The day the doctor saw Bilsky he had an abrasion on his knee, and a dog bite wound on his buttock, a bite or scraping.

James Francis Jackson

1. The Incident Upon Returning to the Jail

Called to the Institution and got there about 11:30 on the night in question when four men were being expected back from the hospital. Received some of the detail about the brew suspicions, and observed the inmates from a distance as they were unloaded from the van. Did not observe blows being struck outside the Institution by the Correction staff. States he was right inside the main doorway at this time. There are two d oors, and he was inside the second door.

States he saw Poole coming in the maindoor, face pale and drawn eyes, bleary, and that outside as he came into the light, Poole was swinging his arms, and he saw a police sergeant move in at that point with the dog. States with regard to those events he could not say whether it was possible for Poole to be struck or not. Infers in his testimony that Poole's grogginess is related to the alcohol. States that Poole did not fall out of the van, but that he came out swinging. States that he had never seen Poole in a violent state before. States that Poole's speech was somewhat slurred and he was somewhat unsteady on his feet. In the Warden's opinion, Poole could not have tripped or could not otherwise have come involuntarily out of the van. Can't state whether Poole hit anybody when he was swinging around, coming out of the van.

Saw Cater in this vicinity, and does not recall seeing him strike at any inmate, particularly Inmate Poole. Discussion with Poole took place in an interview froom near the Guard Room, on a message from A. D. W. Merriam that Poole wanted to see him. States that there was a discussion with Poole which concerned how the 'homebrew' came into existence, and that the incidents pertaining to violence on the night in question were not discussed at all. Poole did not complain about a blow on the head, but he did notice that Poole had a cut over his right eyebrow. The Warden advises that he saw the dog incident at the door, but did not know whether the dog had bitten Poole.

SECTION 6.1 THE INCIDENT CONCERNING INMATE COLLYMORE

SECTION 6.1.1 Location of Witness, Role, Background

Wayne Anthony Collymore

This inmate was on remand at the time of the incident in question.

SECTION 6.1.2 Testimony of Inmate Collymore

All of the testimony put forward concerning this incident is that of Inmate Collymore, and is found at pages 1489 to 1504 of the Transcript of this Inquiry. The reasons which led the Commission not to investigate this incident further, which relate to the findings that the incident was determined to be outside the terms of reference of this Inauiry, are supplied in Section 5.1.4 below.

Inmate Collymore was on remand at the time of the incident in question, and had been in the jail under that status for approximately three months. On the day of the incident in question, Inmate Collymore was returning to his cell, after having viewed a movie in the gymnasium, and stopped to talk to Inmate Schimmons on the way, Inmate Schimmons' cell being en route to Inmate Collymore's cell. Inmate Collymore informed Inmate Schimmons about some of the aspects of the movie, and received some books from Inmate Schimmons. Inmate Collymore states that he was aware that inmates were not supposed to talk to other inmates in their cells but that the practice did occur.

At this juncture, Inmate Collymore states that Officer Andrews advised him to move on towards his own cell and pushed him in that direction. A verbal exchange then ensued, the result being that Inmate Collymore pushed Officer Andrews back and subsequently struck him in the mouth with his fist, knocking Officer Andrews down.

Officer Andrews then exited to obtain some assistance from other officers, being Officers Williams and Cain. In fear and anticipation of how he might be treated by all of these officers as a result of the act that he had committed, and under the advice of Inmate Schimmons, Inmate Collymore went into his cell, ripped a metal bracket or bar off his cell to use to protect himself in the event he was assaulted by the custodial staff, and awaited their return.

The other officers returned, and Officer Williams and Inmate Schimmons were able to calm Inmate Collymore and assure him that he would not be harmed. Inmate Collymore then gave up possession of the steel bracket, and voluntarily went upstairs to make a statement.

Inmate Collymore states that there was no subsequent violence to his person after the events recited above.

There is evidence from Inmate Collymore that prior to the incident in question, and prior to the movie, there had been some shoving and friction between himself and Officer Andrews with regard to Inmate Collymore talking to a prisoner from Segregation with whom contact was forbidden. Inmate Collymore was also made to sit at the back of the movie theatre, despite the fact that his glasses were broken and he could not see from the rear. Inmate Collymore indicates that there also had been previous friction between himself and another guard whom he described as a "fat" guard, with an exchange of insults occurring between Inmate Collymore and this guard. The alleged exchange of insults involved called the guard "a pig', and the alleged delivery of racial slurs against Inmate Collymore by the guard in question.

SECTION 6.1.3 Findings: The Collymore Incident

The Commission finds that on the day of the incident in question, Officer Andrews pushed Inmate Collymore towards his cell with a view to terminating Inmate Collymore's conversation with Inmate Schimmons; that Inmate Collymore subsequently pushed Officer Andrews back, and then struck Officer Andrews on the face and knocked him down.

The Commission finds that there was no further use of force during the duration of this incident.

SECTION 6.1.4 Conclusions: The Collymore Incident

1. The Commission concludes that this incident is in fact outside the terms of reference of this Inquiry, because the terms of reference of this Inquiry do not include the question of excessive use of force by inmates against custodial officers.

2. The Commission concludes that if in fact Officer Andrews actually did shove Inmate Collymore, an act which is indicated in the testimony of Inmate Collymore, that such an act did not amount to an excessive use of force, given Officer Andrews' responsibility according to regulations to deliver Inmate Collymore in a secure and expeditious manner to his cell.

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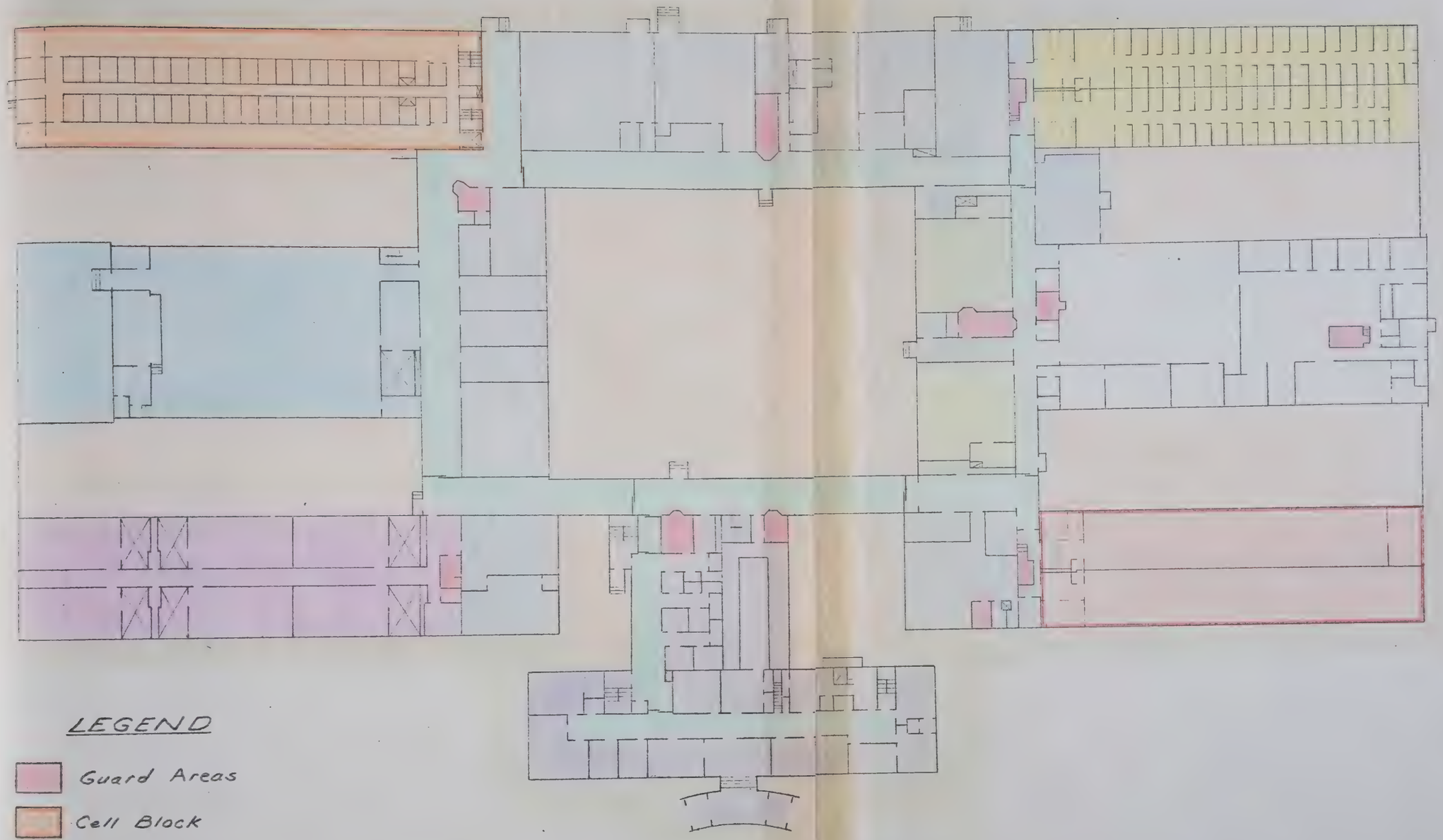


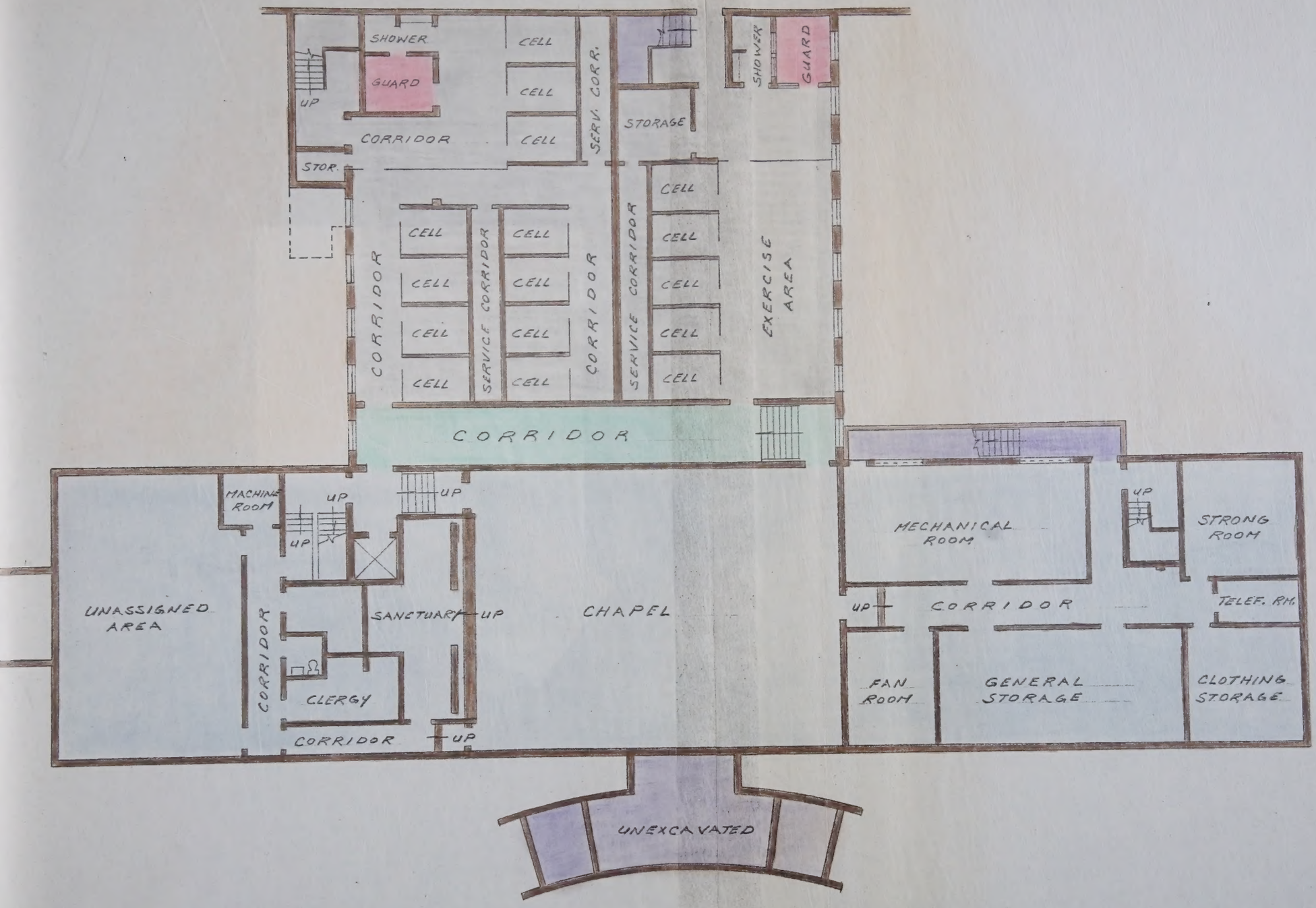
LEGEND

- Guard Areas
- Cell Block
- North Wing
- South East Wing
- South West Wing
- East Wing
- West Wing
- Cooking and Dining
- Main Corridors
- Gymnasium
- Yards
- Office and Visiting Area
- Miscellaneous

CALGARY PROV. GOAL

MAIN FLOOR PLAN

Scale: 1" = 50'-0"	Date: Dec. 7, 1973
Revision:	Dwn By: R.E.T.



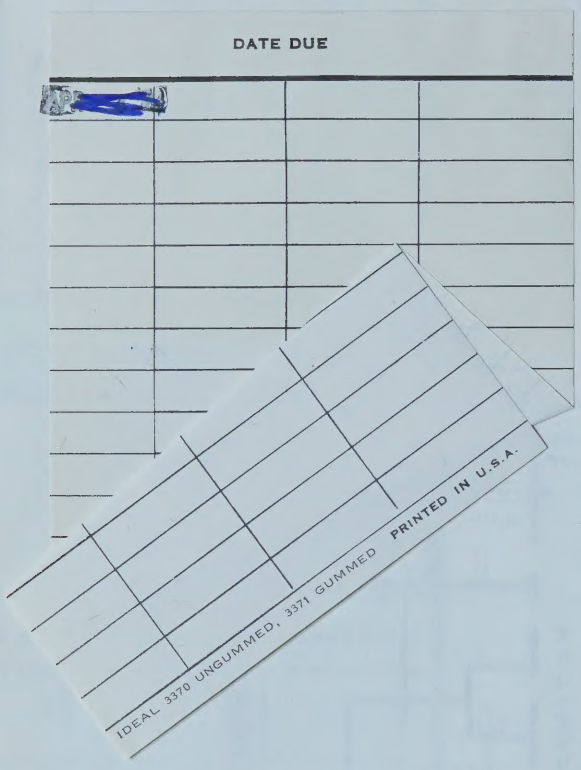
NOTE:

Colors to Correspond With Main Floor Plan, Except For Segregation Area.

CALGARY PROV. GOAL

BASEMENT PLAN

Scale: 1/16" = 1'-0"	DATE: Dec. 7, 1973
Revision:	Dwn. By: R.E.T.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